

# INTERNATIONAL REVIEW

OF THE RED CROSS



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# Red Cross law

by François Bugnion

## 1. Introduction

The International Committee is a Red Cross institution. It takes part in the deliberations of the International Conferences and other statutory bodies of the International Red Cross and Red Crescent Movement of which it is the founder; but it may also be subject to rules laid down by those statutory bodies.<sup>1</sup>

What is the impact of the rules and resolutions adopted by the Movement's statutory bodies vis-à-vis the ICRC, the National Societies and their Federation on the one hand, and the States party to the Geneva Conventions on the other? In any study of the formal sources of the rules applicable to the International Committee in current humanitarian law, these questions must be examined.

As the Red Cross issued from a private initiative, one might see "Red Cross law" — meaning all the rules drawn up by the International Red Cross and Red Crescent Movement — as an autonomous legal system having no relevance to international law. But this would be quite wrong.

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<sup>1</sup> To conform to current usage, the expressions "constituent parts", "components" and "constituent members" are used to denote the member institutions of the International Red Cross and Red Crescent Movement, which are the National Red Cross or Red Crescent Societies, the ICRC and the International Federation of Red Cross and Red Crescent Societies; the term "statutory bodies" is used for the Movement's collective bodies, i.e. the International Conference, the Council of Delegates and the Standing Commission of the Red Cross and Red Crescent. Although the States party to the Geneva Conventions also take part in International Conferences, they are not members of the Movement, as is made clear in Article 2 of the Movement's Statutes (see *International Review of the Red Cross* — *IRRC*, No. 256, January-February 1987, p. 29). In accordance with a century-old custom, the term "International Red Cross" — or, more simply, "Red Cross" — is used to mean the entire Movement where such use creates no confusion.

Indeed, despite the essentially private origins of the Movement's constituent parts — the National Societies, the ICRC and the Federation — there can be no denying that the deliberations and actions of the International Red Cross are of concern to public international law. Three points should be made:

- (a) The States party to the Geneva Conventions take part in the Movement's International Conferences; they are represented by delegates with sufficient powers for them to participate in the debates and to vote in accordance with the instructions of their governments; these delegates therefore legitimately represent the States whose official position they put forward; the participation of government delegates gives the International Conferences an element of public authority which cannot be disregarded by international law;<sup>2</sup>
- (b) the Red Cross and Red Crescent institutions are subject to rules of public international law and carry out activities that are governed by the law of nations; because of this, it may be argued that they possess some measure of international legal personality;
- (c) the Red Cross and Red Crescent institutions themselves contribute to the formation of international humanitarian law, both by their activities and by the drafting of legal instruments which are then submitted to diplomatic conferences.

It can therefore be concluded that, although the Red Cross and Red Crescent institutions are governed essentially by private law, by virtue of their composition and their statutes, their actions, and in particular the proceedings of the International Conferences, have a certain relevance to public international law. Consequently, it must be determined what impact the actions of the Movement have on its members on the one hand and on the States party to the Geneva Conventions on the other.

Before considering these questions, a reminder of the composition and attributions of the statutory bodies of the International Red Cross is in order.

## **2. The statutory bodies of the International Red Cross and Red Crescent Movement**

From the outset, the Red Cross differed from other charitable organizations that flourished during the second half of the nineteenth century

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<sup>2</sup> Richard Perruchoud, *Les Résolutions des Conférences internationales de la Croix-Rouge*, Henry Dunant Institute, Geneva, 1979 (hereafter: Perruchoud, *Les Résolutions*), pp. 46-48, 394-395.

in two basic respects: the permanent nature and the international aspirations of the institutions set up on the basis of the resolutions adopted at the Geneva Conference of October 1863 which gave birth to the Red Cross.

In order to preserve the bonds of solidarity that united them across national borders, the Red Cross Societies were to meet regularly, as laid down by Article 9 of the 1863 resolutions:

*"The Committees and Sections of different countries may meet in international assemblies to communicate the results of their experience and to agree on measures to be taken in the interest of the work".<sup>3</sup>*

The International Committee, as promoter of the Red Cross and guardian of its Fundamental Principles, has always played an active part in such assemblies; the League, as the federation of the National Societies, took part from 1921.

Moreover, from the very start the Red Cross has placed its work in the context of international relations and the law of nations.

To achieve its aims, therefore, the Red Cross needed to associate the States with its activities. This was done at two levels: nationally, each central committee was expected to "get in touch with the Government of its country, so that its services may be accepted should the occasion arise";<sup>4</sup> while at the international level the States party to the Geneva Convention were invited to take part in the International Conferences of the Red Cross and did so from the very first, which was held in Paris in 1867.

All these factors led to the present composition of the International Conference of the Red Cross and Red Crescent. Under the Statutes adopted by the Thirteenth Conference (The Hague, 1928), revised by the Eighteenth (Toronto, 1952) and again by the Twenty-fifth (Geneva, 1986),<sup>5</sup> the International Conference is made up of the following:

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<sup>3</sup> Resolutions of the Geneva International Conference of 1863, Article 9, *International Red Cross Handbook*, 12th ed., ICRC-League, Geneva, 1983, p. 548.

<sup>4</sup> *Ibid.*, Article 3, p. 547.

<sup>5</sup> Statutes of the International Red Cross and Red Crescent Movement, adopted by the Twenty-fifth International Conference of the Red Cross, Geneva, October 1986, *IRRC*, No. 256, January-February 1987, pp. 25-44.

- delegations from duly recognized National Red Cross and Red Crescent Societies;
- delegations from the International Committee of the Red Cross and from the International Federation of Red Cross and Red Crescent Societies;
- delegations from the States party to the Geneva Conventions.

The International Conference is the Movement's supreme deliberative body; as a rule, it meets every four years.

The delegations from the National Societies, the ICRC, the Federation and the States party to the Geneva Conventions are all entitled to play a full part in the proceedings and the voting; each delegation has one vote.<sup>6</sup>

From the time of the Second International Conference of the Red Cross (which met in Berlin in 1869) onwards, National Society delegates were asked to come with precise instructions and sufficient authority to be able to exercise their right to vote.<sup>7</sup> Likewise, it has always been acknowledged that the government delegates are not acting in a personal capacity, but on behalf of the States whose official position they express through their statements and ballots.<sup>8</sup>

While the International Red Cross and Red Crescent Movement is essentially a non-governmental international association, the participation of government representatives at the International Conference gives the meeting a mixed status, both private and public. The composition of the Conference also reflects upon the impact of its resolutions:

*"The votes of government representatives transform what was originally a private matter into a semi-private legal act, of a mixed nature: Conference resolutions thus impinge on the sphere of public international law because of the status of those who drafted and approved them, and any obligations they may contain may be binding on States, to an extent to be determined later".<sup>9</sup>*

The Movement's other statutory bodies are the Council of Delegates and the Standing Commission.

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<sup>6</sup> Articles 8 to 11.

<sup>7</sup> Circulars from the Prussian Central Committee, 23 November 1868 and 1 March 1869, *Compte rendu des Travaux de la Conférence internationale tenue à Berlin du 22 au 27 avril 1869 par les Délégués des Gouvernements signataires de la Convention de Genève et des Sociétés et Associations de Secours aux Militaires blessés et malades*, J.-F. Starcke, Berlin, 1869 (hereafter: *Compte rendu*, 1869) pp. 3-5, 7-9.

<sup>8</sup> Perruchoud, *Les Résolutions*, pp. 46-49, 394-397.

<sup>9</sup> *Ibid.*, p. 48.



The Council of Delegates is made up of representatives of the National Societies, the ICRC and the Federation; it must meet at the time of every International Conference and may also meet between Conferences.<sup>10</sup> As it comprises only representatives of Red Cross and Red Crescent institutions, the Council is the forum in which questions directly concerning the Movement can be discussed. Moreover, several particularly important matters have been given their first airing at the Council of Delegates before being submitted to the Conference.<sup>11</sup>

The Standing Commission of the Red Cross and Red Crescent consists of nine members, five elected in a personal capacity by the International Conference, two representatives of the ICRC and two of the Federation; as a rule it meets twice a year. Its duties are essentially of a procedural nature.<sup>12</sup>

In examining the formal sources of the rules applicable to the International Committee in current humanitarian law, consideration must be given first and foremost to resolutions of the International Conferences. However, before seeking to gauge the legal impact of these resolutions, close attention must be paid to two instruments which, because of their constitutive and fundamental nature, occupy a special place: the Movement's Statutes and its Fundamental Principles.

### **3. The Statutes of the International Red Cross and Red Crescent Movement<sup>13</sup>**

#### **Origins**

Up until the end of the First World War, the legal structure of the Red Cross was relatively slender, consisting of the resolutions of the founding Conference of October 1863, which the ICRC and the National Societies considered binding, a few resolutions of a regulatory nature adopted by

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<sup>10</sup> Articles 12-15 of the Statutes of the International Red Cross and Red Crescent Movement.

<sup>11</sup> Perruchoud, *Les Résolutions*, pp. 63-65.

<sup>12</sup> Articles 16-19 of the Movement's Statutes.

<sup>13</sup> Colonel Draudt and Max Huber, "Rapport à la XIII<sup>e</sup> Conférence internationale de la Croix-Rouge sur les statuts de la Croix-Rouge internationale", *Revue internationale de la Croix-Rouge (RICR)*, No. 119, November 1928, pp. 991-1010; *Treizième Conférence internationale de la Croix-Rouge tenue à La Haye du 23 au 27 octobre 1928, Compte rendu*, pp. 12-19, 48-75, 85, 101-114, 117-118, 182-186; *Statuts de la Croix-Rouge internationale et Règlement de la Conférence internationale de la Croix-Rouge, Projet*

International Conferences of the Red Cross, and by a number of tacit rules imposed by the nature and aims of its work. Each International Conference adopted its own rules of procedure, using previous ones as a guide. Thus at the statutory level the International Red Cross was governed by rules that were to a large extent customary.

With the founding of the League of Red Cross Societies arose the question of the Movement's organization at the international level. During lengthy negotiations, not always very cordial, vain attempts were made to merge the ICRC and the League. Nothing came of this. The ICRC was adamant in preserving its independence, which it believed was essential for its work, while several National Societies insisted on maintaining a federative body which they had a hand in running. Despite its drawbacks, the "two-headed" structure was maintained.

This coexistence of two bodies at the international level necessitated a rational sharing of tasks and responsibilities, as well as a clear demarcation between the position of the ICRC and that of the League within the Movement. The Red Cross as a whole had to adopt a statutory structure designed to safeguard the unity of the Movement and harmonize the activities of the National Societies, the ICRC and the League.

A set of draft statutes, drawn up by Professor Max Huber, then a member of the Committee, and by Colonel Draudt, Vice-President of the League, was adopted by the Thirteenth International Conference of the

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*de Révision*, submitted by the Standing Commission to the Eighteenth International Conference of the Red Cross, Geneva, 7 December 1951 (Document A.18/1952, cyclostyled, 16 pages); *XVIIIth International Red Cross Conference, Toronto, July-August 1952, Proceedings*, pp. 33-39, 96-101, 161-164; Twenty-fifth International Conference of the Red Cross, Geneva, October 1986, *Revision of the Statutes of the International Red Cross and of the Rules of Procedure of the International Conference of the Red Cross*, Drafts prepared by the International Committee of the Red Cross and the League of Red Cross and Red Crescent Societies, Geneva, April 1986, cyclostyled; *Twenty-fifth International Conference of the Red Cross, Geneva, 23-31 October 1986, Report*, pp. 121-122, 166; Statutes and Rules of Procedure of the International Red Cross and Red Crescent Movement (adopted by the Twenty-fifth International Conference of the Red Cross at Geneva in October 1986), *IRRC*, No. 256, January-February 1987, pp. 25-59; André Durand, *History of the International Committee of the Red Cross — from Sarajevo to Hiroshima*, Henry Dunant Institute, Geneva, 1984 (hereafter: Durand, *ICRC history*), pp. 139-162, 166-171, 174-194; André Durand, "Origin and evolution of the Statutes of the International Red Cross", *IRRC*, No. 235, July-August 1983, pp. 175-208; Perruchoud, *Les Résolutions*, pp. 102-108; Jacques Moreillon, "Le Comité international de la Croix-Rouge et la révision des Statuts de la Croix-Rouge internationale", in: *Völkerrecht im Dienste des Menschen, Festschrift für Hans Haug*, Yvo Hangartner and Stefan Trechsel, eds., Paul Haupt, Bern & Stuttgart, 1986, pp. 179-194.

Red Cross at The Hague in October 1928.<sup>14</sup> These statutes were revised by the Eighteenth International Conference (Toronto, July-August 1952), but their basic tenor remained unchanged.<sup>15</sup>

Although for the most part the statutes of the International Red Cross did no more than confirm the *status quo*, the delegates meeting in The Hague firmly believed that they had laid the foundations of a veritable international organization by giving the Red Cross statutory bodies having defined powers.

Indeed, those statutes stood the test of time, and for more than half a century they provided the framework for the Movement's development.

However, in April 1982 the League's Executive Council set up a working group which was asked to "undertake a detailed study with a view to revising the Statutes of the International Red Cross".<sup>16</sup> Although the ICRC was quite satisfied with the statutes then in force, it agreed to take part in this enterprise.

The draft statutes drawn up by the joint ICRC/League working group drew largely on the Toronto revision.<sup>17</sup> The balance between the Movement's components was not altered, but the powers and tasks of the various bodies were more clearly defined; the price of this was that the statutes became more wordy, as not even the Red Cross was immune from the rampant verbosity endemic among international organizations.

The new Statutes of the International Red Cross and Red Crescent Movement were adopted by consensus at the Twenty-fifth International Conference of the Red Cross, meeting in Geneva in October 1986.<sup>18</sup>

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<sup>14</sup> The draft was adopted unanimously, with five abstentions; four National Societies expressed reservations over one of the articles — *Treizième Conférence internationale de la Croix-Rouge, Compte rendu*, pp. 12-19, 48-75, 85, 101-114, 117-118, 182-186.

<sup>15</sup> The Toronto Conference adopted the revised statutes by 70 votes to 17. The governments and National Societies of the socialist countries voted against the revision to mark their opposition to the fact that the new statutes formally acknowledged the ICRC's possession of duties and rights which, these delegations believed, could be enjoyed only by an international organization — *XVIIIth International Red Cross Conference, Proceedings*, pp. 33-39, 96-101 and 161-164.

<sup>16</sup> Decision No. 2 of the League's Executive Council, meeting in Geneva on 23 and 24 April 1982, copy attached to internal note No. 1362 of 21 May 1982, ICRC Archives, file 010.

<sup>17</sup> Twenty-fifth International Conference of the Red Cross, Geneva, October 1986, *Revision of the Statutes of the International Red Cross and of the Rules of Procedure of the International Conference of the Red Cross*, Drafts prepared by the International Committee of the Red Cross and the League of Red Cross and Red Crescent Societies, Geneva, April 1986, cyclostyled.

<sup>18</sup> Resolution XXXI, *Twenty-fifth International Conference of the Red Cross, Geneva, 23-31 October 1986, Report*, pp. 121-122, 166.

## Content

The preamble, which we shall come back to later, recalls the mission and Fundamental Principles of the Movement.

Article 1 gives various definitions; Article 2 is addressed to governments and reminds the States party to the Geneva Conventions that they have undertaken to cooperate with the components of the Movement.

Article 3 defines the role of the National Societies, and the conditions for their recognition are given in Article 4.

Article 5 defines the role of the International Committee, Article 6 that of the Federation. Cooperation between them, and within the Movement, is dealt with in Article 7.

Articles 8 to 11 lay down the definition, composition, functions and procedure of the International Conference; Articles 12 to 15 do the same for the Council of Delegates, and Articles 16 to 19 for the Standing Commission.

Article 20 sets conditions for amending the Statutes; their entry into force (8 November 1986) is given in Article 21.<sup>19</sup>

Article 5 is of direct concern to this study; its wording is as follows:

*“1. The International Committee, founded in Geneva in 1863 and formally recognized in the Geneva Conventions and by International Conferences of the Red Cross, is an independent humanitarian organization having a status of its own. It co-opts its members from among Swiss citizens.*

*2. The role of the International Committee, in accordance with its Statutes, is in particular:*

- a) to maintain and disseminate the Fundamental Principles of the Movement, namely humanity, impartiality, neutrality, independence, voluntary service, unity and universality;*
- b) to recognize any newly established or reconstituted National Society, which fulfils the condition for recognition set out in Article 4, and to notify other National Societies of such recognition;*

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<sup>19</sup> Statutes of the International Red Cross and Red Crescent Movement (adopted by the Twenty-fifth International Conference of the Red Cross at Geneva in October 1986), *IRRC*, No. 256, January-February 1987, pp. 25-59.

- c) *to undertake the tasks incumbent upon it under the Geneva Conventions, to work for the faithful application of international humanitarian law applicable in armed conflicts and to take cognizance of any complaints based on alleged breaches of that law;*
- d) *to endeavour at all times - as a neutral institution whose humanitarian work is carried out particularly in time of international and other armed conflicts or internal strife — to ensure the protection of and assistance to military and civilian victims of such events and of their direct results;*
- e) *to ensure the operation of the Central Tracing Agency as provided in the Geneva Conventions;*
- f) *to contribute, in anticipation of armed conflicts, to the training of medical personnel and the preparation of medical equipment, in co-operation with the National Societies, the military and civilian medical services and other competent authorities;*
- g) *to work for the understanding and dissemination of knowledge of international humanitarian law applicable in armed conflicts and to prepare any development thereof;*
- h) *to carry out mandates entrusted to it by the International Conference.*

3. *The International Committee may take any humanitarian initiative which comes within its role as a specifically neutral and independent institution and intermediary, and may consider any question requiring examination by such an institution.*

4.a) *It shall maintain close contact with National Societies. In agreement with them, it shall co-operate in matters of common concern, such as their preparation for action in times of armed conflict, respect for and development and ratification of the Geneva Conventions, and the dissemination of the Fundamental Principles and international humanitarian law.*

b) *In situations foreseen in paragraph 2 d) of this Article and requiring co-ordinated assistance from National Societies of other countries, the International Committee, in co-operation with the National Society of the country or countries concerned, shall co-ordinate such assistance in accordance with the agreements concluded with the League.*

5. *Within the framework of the present Statutes and subject to the provisions of Articles 3, 6 and 7, the International Committee shall maintain close contact with the League and co-operate with it in matters of common concern.*

*6. It shall also maintain relations with governmental authorities and any national or international institution whose assistance it considers useful".<sup>20</sup>*

It will be seen that the Movement's new Statutes do not give the International Committee any powers that it did not exercise previously. Article 5 can therefore be considered as codifying well-established practice.

## Legal effects

The constitutive instrument of an organization always has two aspects: *a contractual aspect*, since it is an agreement between the parties concerned, and *a constitutional aspect*, since it provides the framework that enables the organization to function. The obligatory force of these rules arises directly from the constitutive aspect of the instrument in question: if the rules were not binding on the parties, the organization could not exist:

*"The constitutive instrument states in a mandatory fashion the rights and obligations of the members and determines the powers of the statutory bodies; its obligatory nature necessarily stems from its constitutive status since, by the will of the parties, it creates an association".<sup>21</sup>*

In the case of the Statutes of the International Red Cross and Red Crescent Movement, however, the diverse nature of the bodies bound by the rules must be taken into account. The legal implications of the Statutes must be examined separately in relation to the Movement's members on the one hand, and in relation to the States party to the Geneva Conventions on the other.

The ICRC, the National Societies and their Federation all stem from private initiative. There are no particular conditions for an association between organizations of this kind; all that is required is their agreement.<sup>22</sup> A relief organization that refused to adhere to the Movement's Statutes could not be recognized as a Red Cross or Red Crescent institution and

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<sup>20</sup> *Ibid.*, pp. 32-34.

<sup>21</sup> Perruchoud, *Les Résolutions*, p. 106.

<sup>22</sup> *Ibid.*

could in no circumstances become a member of the Movement.<sup>23</sup> Nor could the members of the Movement demand of a new National Society that it abide by conditions that they themselves were not bound to observe.<sup>24</sup> The Statutes are binding in all respects on every member of the Movement.

The question becomes more complex in regard to the States party to the Geneva Conventions. The Statutes were not adopted in the usual manner laid down in the law of treaties, but as a resolution — or decision — of an International Conference of the Red Cross. They therefore do not have the status of an international treaty, but this does not detract from their obligatory nature; States, after all, are free to give their assent in any way they see fit. By voting for the Statutes, they contributed to the adoption of a legal instrument enshrining the existence of the International Red Cross and establishing the statutory basis of a Movement with which they are closely linked:

*“The fact that the Statutes were not adopted as a treaty does not mean that States are not bound by them: governments are free to give their consent in any way they choose. Although the Statutes were not adopted in the form of an international treaty, they nevertheless constitute an international instrument which, by its nature, binds the States”.*<sup>25</sup>

Moreover, it would be absurd for States to take part in the establishment of statutory rules imposing obligations on members of the Movement — the ICRC, the Federation and the National Societies — without admitting that the rules are binding on them as well.

In any event, whether or not they were party to the adoption of the Statutes, States that take part in the International Conference recognize the obligatory nature of the statutory rules of the Movement, of which the Conference is an organ; otherwise their attendance would be about as logical as the presence at a sporting event of a competitor who refused to accept the rules of the competition. They are therefore precluded from challenging the obligatory nature of the Statutes therefore also arises from debarment.

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<sup>23</sup> Article 4, point 9, of the Movement's Statutes — *IRRC*, No. 256, January-February 1987, p. 34.

<sup>24</sup> This would be contrary to the precept of the equality of the National Societies, an element of the Movement's Fundamental Principle of universality — *ibid.*, p. 28.

<sup>25</sup> Perruchoud, *Les Résolutions*, pp. 107-108; see also Auguste-Raynald Werner, *La Croix-Rouge et les Conventions de Genève*, Georg & Cie, Geneva, 1943, p. 79.

These conclusions are confirmed by practice. The fact is that government delegations have never claimed, either in 1928 or later, that States were not bound by the Statutes.<sup>26</sup> Quite the contrary: in accepting the Movement's new Statutes, the States party to the Geneva Conventions explicitly undertook to cooperate with the Movement's components in accordance with the Conventions, the Statutes and the resolutions of the International Conference.<sup>27</sup>

We can therefore conclude, along with Richard Perruchoud, that:

*"By their vote, the States recognized the existence of the International Red Cross (...). Consequently, the Statutes apply to them in their entirety, both the provisions defining the authority of the Movement's statutory bodies and those specifying the attributions of the ICRC or the League".<sup>28</sup>*

The International Committee is thus entitled to insist on the recognition by the States party to the Geneva Conventions of the powers it has been granted by the Movement's Statutes.

## **4. The Fundamental Principles of the Red Cross and Red Crescent<sup>29</sup>**

### **Origins**

From the very start, the Red Cross was aware of following a number of basic principles dictated by the institution's aims and by the nature of the activities it proposed to carry out.

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<sup>26</sup> Perruchoud, *Les Résolutions*, p. 108.

<sup>27</sup> "The States Parties to the Geneva Conventions co-operate with the components of the Movement in accordance with these Conventions, the present Statutes and the resolutions of the International Conference" — Article 2, para. 1, of the Statutes, *IRRC*, No. 256, January-February 1987, p. 29.

<sup>28</sup> Perruchoud, *Les Résolutions*, p. 108.

<sup>29</sup> *Council of Delegates of the International Red Cross, Verbatim Report, Prague, 1961*, ICRC, Geneva, 1961 (Document 795b), cyclostyled, pp. 12-46 and Annexes 1-11; *XXth International Conference of the Red Cross, Vienna, October 2-9, 1965, Report*, pp. 51-52, 99-100; Gustave Moynier, "Ce que c'est que la Croix-Rouge", *Bulletin international des Sociétés de la Croix-Rouge*, No. 21, January 1875, pp. 1-8; Max Huber, *La pensée et l'action de la Croix-Rouge*, Geneva, ICRC, 1954; Jean S. Pictet, *Red Cross Principles*, Geneva, ICRC, 1966, and *The Fundamental Principles of the Red Cross, Commentary*, Henry Dunant Institute, Geneva, 1979; Perruchoud, *Les Résolutions*, pp. 129-139; Hans Haug, *Humanity for all — The International Red Cross and Red Crescent Movement*, Henry Dunant Institute, Geneva, Paul Haupt, Bern, Stuttgart, Vienna, 1993, pp. 443-490.



To a large extent these principles were expressed in the Resolutions and Recommendations of the 1863 Conference, and in Article 6 of the Geneva Convention of 22 August 1864, which stated:

*“Wounded or sick combatants, to whatever nation they may belong, shall be collected and cared for”.*

From then on there were countless references to the “fundamental principles” of the Red Cross: in 1869, the Berlin Conference asked the International Committee to ensure the principles were upheld and disseminated.<sup>30</sup> New National Societies, in order to be accepted as members of the Movement, had to adhere to the fundamental principles of the Red Cross.<sup>31</sup> The existence of these principles was accepted and their authority recognized.

On the other hand, for almost a century little effort was made to establish a coherent and universally accepted definition of the principles.

A first attempt was made in 1874, by Gustave Moynier. Noting that the Red Cross Societies were linked by “the pledge they had made to conduct themselves according to certain common rules”, Moynier distinguished four main principles:

- *centralization*, meaning that there could be only one Society in each country; it had to extend its work throughout the national territory;
- *preparedness*, which required each Society to take all necessary measures to be ready to work in the event of war;
- *mutuality*, whereby each Society pledged to help all wounded and sick with equal urgency, whatever their nationality;
- *solidarity*, whereby the Societies undertook to help each other.<sup>32</sup>

When revising its own statutes after the First World War, the ICRC made the mention of four “fundamental and uniform principles which are

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<sup>30</sup> *Compte rendu*, 1869, pp. 80-84, 264.

<sup>31</sup> *Organisation générale et programme de la Croix-Rouge (d'après les décisions prises dans les Conférences internationales par les fondateurs et les représentants de cette institution)*, 2nd ed., ICRC, Geneva, 1898, pp. 25-26.

<sup>32</sup> Gustave Moynier, “Ce que c’est que la Croix-Rouge”, *Bulletin international*, No. 21, January 1875, pp. 1-8; André Durand, “Quelques remarques sur l’élaboration des principes de la Croix-Rouge chez Gustave Moynier”, *Studies and essays on international humanitarian law and Red Cross principles in honour of Jean Pictet*, Christophe Swinarski, ed., ICRC, Geneva, Martinus Nijhoff, The Hague, 1984, pp. 861-873.

at the basis of the Red Cross institution, namely: impartiality, political, religious and economic independence, the universality of the Red Cross and the equality of its members".<sup>33</sup>

These principles are mentioned, in almost identical wording, in Article 10 of the "Conditions for the recognition of National Red Cross Societies" approved by the Seventeenth International Conference of the Red Cross (Stockholm, 1948),<sup>34</sup> and in Article VI, para. 2, of the Statutes of the International Red Cross, revised by the Toronto Conference in 1952.<sup>35</sup>

This statement of principles could not, however, be considered exhaustive. So even though the existence and compulsory nature of the fundamental principles was universally accepted, they remained largely undefined. The Red Cross unceasingly claimed to adhere to fundamental norms but appeared unwilling — or unable — to specify their content.

The League's Board of Governors took up the question after the Second World War. To the four existing principles they added thirteen others, in which the aims of the Red Cross, its fundamental principles and some rules of procedure were jumbled together.<sup>36</sup>

The Toronto Conference endorsed this new statement of principles, while stressing that the four original principles remained "the corner-stone of the Red Cross" — a remark that only added to the confusion.<sup>37</sup>

Since the process of formulating the fundamental principles of the Red Cross had been started, universally acceptable wording had to be found. The Standing Commission decided to set up a joint ICRC-League commission for the purpose. On the basis of the resolutions of past Conferences and the outstanding contribution made by Max Huber and Jean Pictet, the joint commission prepared a draft of seven articles which was sent to all National Societies and approved unanimously by the Council

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<sup>33</sup> Statuts du Comité international de la Croix-Rouge, 10 mars 1921, Article 3, *RICR*, No. 28, April 1921, pp. 379-380.

<sup>34</sup> *International Red Cross Handbook*, p. 498.

<sup>35</sup> *Ibid.*, p. 409.

<sup>36</sup> Board of Governors, XIXth meeting, Oxford, 1946, Resolution 12, revised by Resolution 7 of the XXth meeting, Stockholm, 1948, *International Red Cross Handbook*, pp. 549-552.

<sup>37</sup> *XVIIIth International Red Cross Conference, Proceedings*, pp. 112-113, 148 (Resolution 10).

of Delegates, meeting in Prague in 1961.<sup>38</sup> The draft was then submitted to the Twentieth International Conference (Vienna, 1965), where it was adopted unanimously under the title “Proclamation of the Fundamental Principles of the Red Cross”.<sup>39</sup>

Since then, the Fundamental Principles — which are solemnly read out at the opening ceremony of each International Conference — have been recognized as the Movement’s basic charter. Their authority has never been questioned.

These principles — whose wording has remained unaltered, save for the replacement of “Red Cross” by “*International Red Cross and Red Crescent Movement*” — are now incorporated in the Movement’s new Statutes.<sup>40</sup> Their position in the preamble underscores both their authority and their pre-eminence in what may be called “Red Cross law”.

## Content

The Fundamental Principles should be quoted in their entirety:

### *“HUMANITY*

*The International Red Cross and Red Crescent Movement, born of a desire to bring assistance without discrimination to the wounded on the battlefield, endeavours, in its international and national capacity, to prevent and alleviate human suffering wherever it may be found. Its purpose is to protect life and health and to ensure respect for the human being. It promotes mutual understanding, friendship, co-operation and lasting peace amongst all peoples.*

### *IMPARTIALITY*

*It makes no discrimination as to nationality, race, religious beliefs, class or political opinions. It endeavours to relieve the suffering of individuals, being guided solely by their needs, and to give priority to the most urgent cases of distress.*

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<sup>38</sup> Council of Delegates of the International Red Cross, *Verbatim Report, Prague, 1961*, p. 46.

<sup>39</sup> Resolution VIII, XXth International Conference of the Red Cross, *Report*, pp. 51-52, 99-100.

<sup>40</sup> *IRRC*, No. 256, January-February 1987, pp. 27-28.

*NEUTRALITY*

*In order to continue to enjoy the confidence of all, the Movement may not take sides in hostilities or engage at any time in controversies of a political, racial, religious or ideological nature.*

*INDEPENDENCE*

*The Movement is independent. The National Societies, while auxiliaries in the humanitarian services of their governments and subject to the laws of their respective countries, must always maintain their autonomy so that they may be able at all times to act in accordance with the principles of the Movement.*

*VOLUNTARY SERVICE*

*It is a voluntary relief movement not prompted in any manner by desire for gain.*

*UNITY*

*There can only be one Red Cross or one Red Crescent Society in any one country. It must be open to all. It must carry on its humanitarian work throughout its territory.*

*UNIVERSALITY*

*The International Red Cross and Red Crescent Movement, in which all Societies have equal status and share equal responsibilities and duties in helping each other, is worldwide.”<sup>41</sup>*

**Legal effects**

Consideration must now be given to the legal effects of the Fundamental Principles of the Red Cross and Red Crescent.

The moral authority of the principles is unquestionable, but this does not exempt them from being examined from the legal viewpoint. In looking into the formal sources of the rules governing the ICRC, it is crucial to determine their legal effects.

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<sup>41</sup> *Ibid.*

Once again, a distinction must be made between the position of the Red Cross and Red Crescent institutions on the one hand, and that of the States party to the Geneva Conventions on the other.

The binding force of the principles for the Movement stems from their fundamental character, from their unanimous acceptance as mandatory rules for the Movement's members and from their place in the set of rules making up "Red Cross law".

Just like the Statutes, the Fundamental Principles form part of the constitutive rules of the Red Cross. At the regulatory level, they perform the same function as the Statutes do at the institutional level: they provide the cement without which the edifice of the Movement would fall apart. Even more than the statutory rules, the principles stand for belief in certain basic ideals which transcend not only national borders but also political, economic, religious, ideological and racial differences; they preserve the bond of solidarity without which the Movement would lose its meaning.

The principles' obligatory force is also rooted in tradition. Although their wording is relatively recent, there is no doubt that their proclamation in 1965 was the expression of a conviction going back to the very beginnings of the Movement.

Last but not least, the principles are binding on the Red Cross and Red Crescent because they flow quite naturally from the Movement's essential purpose: take away the principle of humanity, and the Red Cross loses its *raison d'être*; take away the other principles, and its work is paralysed.

There is no difficulty in proving that the Fundamental Principles are indeed mandatory. The tenth condition for the recognition of new National Societies states that an aspiring Society must "respect the Fundamental Principles of the Movement...".<sup>42</sup> It would be contrary to those very principles, and in particular to that of the equality of National Societies, to impose rules on new Societies that were not binding on existing ones. As for the Federation, it could hardly exempt itself from rules that were binding on all its members. The International Committee, as guardian of the principles, obviously has to abide by them.

There is no doubt, therefore, that the Fundamental Principles proclaimed by the Twentieth International Conference, and reaffirmed by the

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<sup>42</sup> Article 4, point 10, of the Statutes of the International Red Cross and Red Crescent Movement, *ibid.*, p. 32.

Twenty-fifth, are mandatory in their entirety for all Red Cross and Red Crescent bodies. They form a set of obligatory rules which the Movement could not renounce without dissolving itself.

The same does not hold true, however, for the States party to the Geneva Conventions. The wording of the 1965 proclamation and that of the preamble to the Statutes makes it quite clear that these are rules directed towards the Red Cross and Red Crescent institutions.

Nevertheless, this does not mean that States are totally unaffected by rules which they themselves approved unanimously.

Indeed, as the Fundamental Principles are referred to in treaty law, they may create obligations for States party to the Geneva Conventions. Article 44, para. 2, of the First Convention allows National Societies to use the red cross emblem in peacetime when carrying out activities that conform to the principles laid down by International Conferences of the Red Cross. Article 63 of the Fourth Convention states that an occupying power must, save for temporary and exceptional security measures, allow recognized National Societies to "pursue their activities in accordance with Red Cross Principles, as defined by the International Red Cross Conferences". Similarly, Article 81 of Protocol I refers to the Fundamental Principles to define the facilities which parties to a conflict must grant to National Societies and the League;<sup>43</sup> during the drafting of the Protocol, it was made clear that this referred to the principles contained in the 1965 proclamation.<sup>44</sup>

But the States' obligations go beyond those set out in treaty law. It has to be accepted that they are bound in a more general sense; it would be inconceivable that States should take part in the adoption of rules binding on the Red Cross and Red Crescent institutions without acknowledging that those institutions have to obey the rules in question.

Is it possible to define the scope of this obligation? Any legal obligation can take one of the following three forms: an obligation to act, an obligation to refrain from acting, or an obligation to permit action. In the case of the Fundamental Principles of the Red Cross and Red Crescent, the governments' obligation is of the third kind. Given the mandatory

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<sup>43</sup> Article 81, paras. 2 and 3, of Protocol I.

<sup>44</sup> *Official Records of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts* (Geneva, 1974-1977), Federal Political Department, Bern, 1978, vol. VIII, pp. 389-390.

force of the principles for members of the Movement and their place in "Red Cross law" on the one hand, and the participation of governments in the adoption of the principles on the other, it is obvious that, quite apart from any treaty obligation, the States are bound to allow Red Cross and Red Crescent bodies to act in accordance with the principles and to insist on this right being respected. If this were not the case, government support for the adoption of the principles would be meaningless.

So while the States themselves are not bound to adhere to the Fundamental Principles, they are obliged to allow Red Cross and Red Crescent organizations to do so. The principles may therefore be invoked against States party to the Geneva Conventions, and the Movement's organizations are within their rights to insist on respecting them.

This conclusion is supported by Article 2, para. 4, of the Movement's Statutes, which states:

*"The States shall at all times respect the adherence by all the components of the Movement to the Fundamental Principles".<sup>45</sup>*

A recent example serves to illustrate the point.

Between 1970 and 1979 Cambodia, then called Kampuchea, was ravaged by a ferocious civil war, followed by a reign of terror imposed by fanatical revolutionaries; this regime was toppled in January 1979, leaving the country in an indescribable state of devastation. In the summer of 1979 the ICRC and UNICEF sent two delegates to Kampuchea to meet the new authorities and to lay the groundwork for a relief operation to save the Khmer people from imminent famine. Negotiations with the government of the People's Republic of Kampuchea had almost been completed when hundreds of thousands of Cambodian refugees fled towards Thailand. The ICRC and UNICEF decided to assist them, by distributing relief supplies not only to those who had crossed into Thailand but also to those who had gathered at the border, in areas that the Phnom Penh government did not control. The latter considered this to be unacceptable interference in the country's internal affairs and threatened to expel the joint ICRC/UNICEF mission unless it stopped the border operation immediately.<sup>46</sup> The two organizations were faced with a dilemma:

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<sup>45</sup> *IRRC*, No. 256, January-February 1987, p. 30.

<sup>46</sup> *Aide-memoire* from the Ministry of Foreign Affairs of the People's Republic of Kampuchea to the joint ICRC/UNICEF mission, 28 September 1979, ICRC Archives, file 280 (180).

either they ignored the pressing need to help people at the border, or they accepted the risk of a breakdown in relations with the Phnom Penh authorities, who exercised *de facto* control over most of the country and most of the population.

The International Committee assessed the problem primarily from the point of view of the Red Cross principles. On the basis of the principles of humanity and impartiality, it came to the following conclusions:

- (a) it had not only the right but also the duty to bring protection and assistance to all victims of the conflict;
- (b) the principle of impartiality obliged it to offer its services to every authority which exercised *de facto* control over the victims;
- (c) no government was entitled to demand that the ICRC violate the Fundamental Red Cross Principles.

The Executive Director of UNICEF, having regard essentially to the principle of non-discrimination, came to the same conclusions.

Delegates of the joint mission were instructed to explain this position to the Kampuchean authorities. While maintaining its opposition to the relief operations carried out from Thai territory, the Phnom Penh government agreed to pursue its cooperation with the ICRC and UNICEF, thereby implicitly acknowledging the ICRC's right to continue an operation consistent with the Red Cross principles.<sup>47</sup> Once this political obstacle had been overcome, the two organizations began what was to become one of the largest relief operations since the end of the Second World War.<sup>48</sup>

This example is a good illustration of the legal weight of the Fundamental Principles of the Red Cross and Red Crescent: the principles are obligatory for the Movement; they have to be respected by States party to the Geneva Conventions in that these States must agree to the Red Cross and Red Crescent institutions' observance of them.

In its judgment of 27 June 1986 in the case of military and paramilitary activities in and against Nicaragua, the International Court of

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<sup>47</sup> Record of a meeting with Hun Sen, Foreign Minister of the People's Republic of Kampuchea, 14 October 1979, ICRC Archives, file 280 (180).

<sup>48</sup> *Back from the Brink*, report by the International Committee of the Red Cross on the joint ICRC/UNICEF operation in Thailand and Kampuchea, ICRC, Geneva, 1981; Maggie Black, *The children and the nations. The story of UNICEF*, UNICEF, New York, 1986, pp. 378-407; William Shawcross, *The quality of mercy. Cambodia, holocaust and modern conscience*, André Deutsch, London, 1984.



Justice acknowledged without any ambiguity that the Red Cross Fundamental Principles had to be respected by States. Examining the lawfulness of the "humanitarian assistance" supplied by the United States government to the counter-revolutionary forces (*contras*) opposing the government of Nicaragua, with reference to the principle of non-interference in the internal affairs of a State, the Court unhesitatingly observed that the provision of strictly humanitarian assistance to persons or forces in another country could in no way be considered illicit, provided that such assistance conformed to the Fundamental Principles of the Red Cross, in particular those of humanity and impartiality:

*"An essential feature of truly humanitarian aid is that it is given 'without discrimination' of any kind. In the view of the Court, if the provision of 'humanitarian assistance' is to escape condemnation as an intervention in the internal affairs of Nicaragua, not only must it be limited to the purposes hallowed in the practice of the Red Cross, namely 'to prevent and alleviate human suffering', and 'to protect life and health and to ensure respect for the human being'; it must also, and above all, be given without discrimination to all in need..."*<sup>49</sup>

The International Court of Justice thus clearly recognized the obligatory force of the Fundamental Red Cross Principles; not only do they oblige States to allow Red Cross and Red Crescent bodies to abide by them, but they are also a source of obligations for States themselves, if the latter claim to be engaged in humanitarian activity.

Finally, government delegations attending International Conferences of the Red Cross must respect the Movement's Fundamental Principles in the same way as all the other delegations. Article 11, para. 4, of the Movement's Statutes states:

*"All participants in the International Conference shall respect the Fundamental Principles and all documents presented shall conform with these Principles"*<sup>50</sup>

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<sup>49</sup> International Court of Justice, Case concerning military and paramilitary activities in and against Nicaragua, Merits, Judgment of 27 June 1986, *ICJ Reports 1986*, pp. 14-150, at p. 115.

<sup>50</sup> *IRRC*, No. 256, January-February 1987, p. 38.

## 5. The resolutions of International Conferences of the Red Cross<sup>51</sup>

We can now return to the question which was put at the beginning of this chapter: what are the legal effects of resolutions of International Conferences of the Red Cross, for the Red Cross and Red Crescent institutions on the one hand, and for States party to the Geneva Conventions on the other?

Few questions have so divided legal opinion since the end of the Second World War as that of the legal impact of resolutions passed by international organizations. Some schools of thought have endeavoured to prove the mandatory nature of such resolutions, and others the absence of any legal effects.

In these terms, the question seems poorly phrased. Instead of asking whether or not the resolutions have any obligatory force, it would appear preferable to look at the matter from another angle and break it down into two aspects:

- (a) what are the conditions to be met for a resolution to be binding on the members of an organization?
- (b) if a resolution is not binding, can it still have any legal effects, and, if so, which?

The theory of international organizations provides an answer to the first question: two conditions must be met for a resolution to be obligatory. First, the body adopting it must be competent to lay down rules that are

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<sup>51</sup> The principal reference work is Richard Perruchoud, *Les résolutions des Conférences internationales de la Croix-Rouge*, Henry Dunant Institute, Geneva, 1979. On the legal effects of the resolutions of international organizations, see: Philippe Cahier "Le droit interne des organisations internationales", *Revue générale de Droit international public*, 1963, 67<sup>e</sup> année, vol. 3, pp. 563-602 (hereafter: Cahier, "Le droit interne"); Jorge Castañeda, "Valeur juridique des résolutions des Nations Unies", *Collected courses of the Hague Academy of International Law*, 1970, tome 129, vol. I, pp. 205-331; Paul Reuter, *Institutions internationales*, 7th ed., Presses universitaires de France, Paris, 1972, p. 213 ff.; Charles Rousseau, *Droit international public*, tome I, Sirey, Paris, 1970, pp. 433-443; Krzysztof Skubiszewski, "A new source of the law of nations : Resolutions of international organisations", in: *En hommage à Paul Guggenheim*, Faculté de Droit de l'Université de Genève et Institut universitaire de Hautes Etudes internationales, Geneva, 1968, pp. 508-520 (hereafter: Skubiszewski, "A new source"); Michel Virally, "La valeur juridique des recommandations des organisations internationales", *Annuaire français de droit international*, vol. II, 1956, pp. 66-96, and "The sources of international law", *Manual of public international law*, Max Sørensen, ed., Macmillan, London, 1968, pp. 116-174, esp. pp. 157-165.

binding on those whom they address; secondly, that body must intend to lay down such rules.

Generally speaking, the intentions of the body adopting the resolution are sufficiently clear from the wording of the text; in case of doubt, the preparatory work will make its authors' wishes clear. This is a matter of interpretation.

With regard to the competence of such bodies, two factors must be taken into account. In the first place, an organization may adopt resolutions that are binding on its members insofar as it is competent to do so; the limits of such competence vary according to the aims of the organization, its structure and the degree of integration desired by the members; as a rule, examination of the organization's founding charter will reveal the scope of its powers, in particular its power to take decisions binding on its members. The fact that the Statutes of the International Red Cross and Red Crescent Movement were adopted as a resolution rather than as a treaty does not alter the legal situation, once it has been established that the Statutes have obligatory force for both members of the Movement and for States party to the Geneva Conventions.

Apart from the powers which are explicitly assigned to an organization by its founding charter, it is generally accepted that every organization enjoys other powers necessary for the achievement of its aims. These are implicit powers not specifically mentioned in its charter; in each case, it must be proved that such implicit powers are necessary for the pursuit of the organization's objectives.<sup>52</sup>

The theory of implicit powers serves as a guide in the interpretation of an organization's founding charter. In case of doubt, treaty obligations are generally given a restrictive reading, while the founding charter can be interpreted more broadly; the principle of efficiency prevails over other rules of interpretation.<sup>53</sup>

This theory also applies to the internal rules of an organization. No organization could achieve its aims if it did not have the power to lay down rules necessary for it to function, in areas such as the admission of new members, the election of decision-making bodies, the procedure for ensuring that those bodies express the wishes of the membership as a

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<sup>52</sup> International Court of Justice, *Reparation for injuries suffered in the service of the United Nations*, Advisory Opinion of April 11th, 1949, *ICJ Reports 1949*, pp. 175-188, esp. pp. 180-182.

<sup>53</sup> Cahier, "Le droit interne", p. 578; Reuter, *Institutions internationales*, p. 215.

whole, and the establishment of subsidiary bodies. In every aspect of its internal regulation, any organization is empowered to supplement the rules laid down in its founding charter. The binding force of those rules on the membership stems from their status as internal regulations, from their relationship to the constitutive rules which are thereby supplemented and clarified, and from the need to ensure that the organization can function properly so as to achieve its aims.<sup>54</sup>

These considerations apply to the International Red Cross and Red Crescent Movement as well as to any other organization. To determine the binding force of the resolutions of International Conferences, therefore, we must examine both the powers given to the Conference by the Movement's Statutes and those which may be regarded as implicit.

It has to be said, however, that the Statutes are not entirely clear about the powers of the International Conference.

Under the terms of Article 10, para. 5, "...the International Conference shall adopt its decisions, recommendations or declarations in the form of resolutions". The Conference alone has the authority to amend the Movement's Statutes and Rules of Procedure, to give a final ruling on any difference of opinion over the interpretation and application of the Statutes and Rules, and to settle any question referred to it by the International Committee or the Federation in the event of disagreement. The Conference contributes to the unity of the Movement and to the pursuit of its mission in full compliance with the Fundamental Principles; it contributes to respect for and development of international humanitarian law; it may assign mandates to the International Committee or the Federation, within the limits of their respective statutes and those of the Movement; but it has no power to amend their statutes or to take any decision that runs counter to them.<sup>55</sup>

The preparatory work offers few clues. Indeed, while it was agreed that the Conference might have to take decisions that were binding on members of the International Red Cross, it was also stressed that the adoption of the Movement's Statutes would in no way jeopardize the independence enjoyed by the Red Cross institutions.<sup>56</sup>

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<sup>54</sup> Cahier, "Le droit interne", pp. 583 and 587; Reuter, *Institutions internationales*, p. 225; Skubiszewski, "A new source", p. 510.

<sup>55</sup> Statutes of the International Red Cross and Red Crescent Movement, *IRRC*, No. 256, January-February 1987, p. 37.

<sup>56</sup> *Treizième Conférence internationale de la Croix-Rouge, Compte rendu*, p. 104.

Although they are not absolutely clear, the Statutes still allow certain conclusions to be drawn, particularly when they are analysed with reference to the theory of international organizations.

Among the texts which must be considered as mandatory are resolutions concerning internal regulations, such as the Rules of Procedure of the International Red Cross and Red Crescent Movement, resolutions concerning the establishment of subsidiary bodies and the rules governing the various Funds and Medals.<sup>57</sup>

It must also be accepted that the Conference is empowered to lay down binding rules that are essential to maintaining "the unity of the Movement and the achievement of its mission in full compliance with the Fundamental Principles". These would include, for example, the Principles and Rules governing disaster relief operations.<sup>58</sup>

Furthermore, Article 10, para. 6, of the Statutes allows the Conference to assign mandates to the International Committee and to the Federation; Article 5, para. 2(h), states that the ICRC shall carry out mandates entrusted to it by the International Conference. Therefore it must be assumed that the resolutions whereby the Conference assigns mandates to the ICRC are binding on the Committee. However, Article 5, para. 1, of the Statutes defines the ICRC as an independent organization; is there not, then, a risk that in assigning mandates to the ICRC the Conference might be violating the Committee's independence? There is no such risk: a mandate is a contractual arrangement whereby the agent undertakes to act on behalf of the principal. For the mandate to be valid, the Committee has to give its consent, either by proposing the mandate itself, by agreeing to it in the course of discussions or by voting for it. When these conditions are met, the mandate is then binding on the ICRC.<sup>59</sup>

It thus appears that the International Conference's power to lay down binding rules depends on the body directly addressed by those rules: the power is greater with regard to the Red Cross and Red Crescent institu-

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<sup>57</sup> Perruchoud, *Les Résolutions*, pp. 110-129.

<sup>58</sup> *Ibid.*, pp. 231-233. The Principles and Rules for Red Cross Disaster Relief were adopted by the XXIst International Conference (Istanbul, 1969), amended by the XXIIInd (Tehran, 1973), by the XXIIIrd (Bucharest, 1977) and by the XXIVth (Manila, 1981). They appear in the *International Red Cross Handbook*, pp. 488-494. The Principles and Rules were further amended by the Twenty-fifth International Conference — *Twenty-fifth International Conference of the Red Cross, Report*, p. 167.

<sup>59</sup> Perruchoud, *Les Résolutions*, pp. 144-163.

tions than to States; and it is greater with regard to the ICRC and the Federation than to the National Societies.

However, it should be pointed out that a resolution that is binding only on certain entities may create indirect obligations for others. For example, it would be inconceivable for the Conference to assign a mandate to the ICRC or the Federation without States and National Societies (who took part in the decision to assign that mandate) being obliged, at the very least, not to obstruct its execution. A resolution binding on certain members of the Conference is thus likely to create concomitant obligations — of a different sort — for other members.

The competence of the International Conference to adopt resolutions binding on its members is, nonetheless, very restricted. The vast majority of resolutions do not lay down mandatory rules, but recommend a certain course of action for members of the Movement or for States. The resolutions may deal with any matter of concern to the Movement, such as health and social welfare, disaster relief, protection and assistance in the event of armed conflict, the development of humanitarian law, and Red Cross action for peace.

These resolutions are essentially recommendations or exhortations. But it would be quite wrong, as a consequence, to see them as having no legal significance.

Any resolution by an international body is the expression of a certain convergence of opinion or common will. It may also reflect a legal conviction, whose authority must be judged in each case on its merits, taking account of the text itself and the degree of unanimity in its adoption.

Moreover, a resolution which is not in itself binding may still have a certain legal impact if it is linked to another source of law. Thus, a resolution referring to a constant and consistent practice may, although not having legal force itself, provide evidence of a legal conviction which in turn suggests the existence of a customary rule. Similarly, a resolution of an International Conference of the Red Cross may help in interpreting a treaty provision, notably a provision of the Geneva Conventions or their Additional Protocols.

It must also be accepted, in a more general sense, that a resolution adopted by an international body always carries an element of compulsion in respect of the members of that body. Judge Lauterpacht has stated that a resolution of the UN General Assembly, recommending a certain course of action to Member States, “creates *some* legal obligation which, how-

ever rudimentary, elastic and imperfect, is nevertheless a legal obligation and constitutes a measure of supervision. The State in question, while not bound to accept the recommendation, is bound to give it due consideration in good faith".<sup>60</sup> Government participation in the adoption of resolutions of International Conferences of the Red Cross has a lesser impact than in the adoption of United Nations resolutions because, for the former, the governments are not alone in voting. However, this does not fundamentally alter the conclusion: there is here a question of good faith, of a threshold below which the participation of States at the International Conference would have no meaning.

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Among the resolutions urging belligerents to adopt a certain line of conduct, particular mention should be made of those that apply to non-international armed conflicts.

Because of the rudimentary nature of the legal rules applicable to internal conflicts, it is hardly surprising that the Red Cross should try to supplement them, either by resolutions dealing specifically with internal strife, or by resolutions that apply equally to international and internal conflicts.<sup>61</sup>

There then arises the question of the binding force of these resolutions on the parties to a conflict, and in particular on an insurgent movement. It cannot be claimed *a priori* that they are fully binding on insurgents who took no part in their adoption. But, if adopted unanimously, such resolutions should be taken as the expression of a legal conviction held by the international community and the Red Cross. As such, they carry an element of compulsion which an insurgent movement seeking some form of international recognition could hardly ignore. At the very least, such a group would be expected to consider the resolutions in good faith.

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<sup>60</sup> International Court of Justice, South-West Africa — Voting Procedure, Advisory Opinion of June 7th, 1955, separate opinion of Judge Lauterpacht, *ICJ Reports 1955*, pp. 118-119.

<sup>61</sup> A list of resolutions passed by International Conferences of the Red Cross and applicable to non-international armed conflicts appears on pp. 439-441 of the author's work *Le Comité international de la Croix-Rouge et la protection des victimes de la guerre*, ICRC, Geneva, 1994.

Whether they are intended to impose mandatory rules on those to whom they are addressed, or are essentially in the nature of recommendations, the resolutions of International Conferences of the Red Cross have an undeniable impact on international law; the weight of that impact has to be measured in each case. It must be accepted that "Red Cross law", while retaining its separate identity, is too closely linked to the law of nations for it to be without any relevance to the latter.

These conclusions are supported by the practice of the International Committee and by that of States in their relations with it. Throughout its history the ICRC has relied on resolutions of International Conferences for support, in particular those which have granted it mandates or acknowledged its authority in particular fields.<sup>62</sup>

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<sup>62</sup> In this respect, particular reference should be made to Resolution IV/3 of the Berlin Conference (1869) concerning the creation of an information agency; Resolution VI of the Washington Conference (1912) concerning assistance to prisoners of war, and Resolution XIV of the Geneva Conference (1921) concerning the work of the Red Cross in the event of civil war.



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# The International Conferences of the Red Cross as a factor for the development of international humanitarian law and the cohesion of the International Red Cross and Red Crescent Movement

by Philippe Abplanalp

## THE INTERNATIONAL CONFERENCE, ITS ROLE AND PURPOSE

The 26th International Conference of the Red Cross and the Red Crescent will take place in Geneva in December 1995. This Conference, which meets every few years, is unquestionably the most important forum for addressing humanitarian issues. It is also a source of cohesion between States and the various components of the International Red Cross and Red Crescent Movement, whose history since its inception has been closely linked with Geneva. The 26th International Conference should have been held in Budapest in 1991, but was unfortunately postponed owing to political problems. As a result, nine years have passed since the last Conference in 1986, which was also held in Geneva.

The purpose of this article is to retrace the history of the International Conference and show what it has contributed to the development of humanitarian law and to the International Red Cross and Red Crescent Movement as a whole.

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From the outset, the Red Cross differed from other voluntary organizations that came into being during the second half of the nineteenth century in two basic respects, namely the permanent nature and the international aspirations of its component institutions.<sup>1</sup>

In order to preserve the sense of solidarity required to unite them across national borders, the new Red Cross Societies had to be able to meet at regular intervals, as provided for by Article 9 of the Resolutions of 1863:

*"The Committees and Sections of different countries may meet in international assemblies to communicate the results of their experiences and to agree on measures to be taken in the interest of the work".<sup>2</sup>*

To achieve the goals set, the various States had to be involved in the institution's activities. This was accomplished on both the national and the international level: each National Society had to establish a relationship of cooperation with the government of its country, and the States party to the Geneva Conventions were invited to participate in the International Conferences of the Red Cross, starting with the first such Conference in Paris in 1867.

In accordance with the Statutes adopted by the 13th Conference at The Hague in 1928, revised by the 18th Conference at Toronto in 1952 and then by the 25th Conference at Geneva in 1986,<sup>3</sup> the International Conference is composed of the delegations from the International Committee of the Red Cross (ICRC), from the International Federation of Red Cross and Red Crescent Societies, from the more than 160 recognized Red Cross or Red Crescent Societies and from over 180 States party to the Geneva Conventions. Each of these delegations has the right to vote, with one vote each.

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<sup>1</sup> François Bugnion, *Le Comité international de la Croix-Rouge et la protection des victimes de la guerre*, ICRC, Geneva, 1994, p. 415 (currently being translated into English with the title *The International Committee of the Red Cross and the Protection of War Victims*).

<sup>2</sup> Resolutions of the Geneva International Conference of 1863, Article 9, *International Red Cross Handbook*, 12th edition, ICRC-League, 1983, p. 548.

<sup>3</sup> Statutes of the International Red Cross and Red Crescent Movement, adopted by the 25th International Conference of the Red Cross, Geneva, October 1986, in *International Review of the Red Cross* (hereinafter *IRRC*), No. 256, January-February 1987, pp. 25-44.

Observers may also attend the Conference, but without voting rights. They represent more than 60 governmental or non-governmental, regional or international organizations which have working relations with the Movement or a special interest in humanitarian law or related problems. National Societies which are not yet recognized are also invited with observer status.

The Conference is the supreme deliberative body for the Movement. It meets in principle every four years, at the invitation of a National Society, the ICRC or the Federation.

At the Berlin Conference in 1869, calls were made for the delegates of National Societies to be given precise instructions and adequate powers for the exercise of their right to vote.<sup>4</sup>

Government delegates likewise do not act in a personal capacity but as representatives of their respective State, whose official position they express in their statements and votes.<sup>5</sup> The participation of State representatives gives the International Conference a combined private and public status. The composition of the Conference furthermore determines the bearing of the resolutions it adopts:

*"Voting by States transforms the originally private act into a semi-private legal act of a composite nature: the Conference's resolutions thus verge on the sphere of public international law by reason of the capacity of their authors, and any obligations they contain can be upheld vis-à-vis States to an extent to be specified later".<sup>6</sup>*

State representatives are also able to intervene in order to keep the resolutions within such bounds as they deem compatible with their government's requirements. The fact that measures advocated by the Red Cross world are thus formulated in conjunction with government representatives is conducive to their eventual adoption by governments. Such was the case with the Geneva Conventions themselves.

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<sup>4</sup> Circulars from the Central Prussian Committee, 23 November 1866 and 1 March 1869, *Compte rendu des Travaux de la Conférence internationale tenue à Berlin du 22 au 27 avril 1869 par les Délégués des Gouvernements signataires de la Convention de Genève et des Sociétés et Associations de Secours aux Militaires blessés et malades*, printed by J.-F. Starcke, Berlin, 1869 (hereinafter: *Deuxième Conférence internationale*), pp. 7-9.

<sup>5</sup> Richard Perruchoud, *Les Résolutions des Conférences internationales de la Croix-Rouge*, Henry Dunant Institute, Geneva, 1979, pp. 46-49 and 394-397.

<sup>6</sup> *Idem*, p. 48.

After an opening ceremony, the International Conference meets in plenary session to elect its Chairman, Vice-Chairmen, a Secretary-General and two Assistant Secretaries-General. Delegates then split up into two commissions, each of which may propose resolutions for submission to the Conference as a whole. The resolutions themselves determine the policy which States and the Movement will pursue with regard to the humanitarian problems of the moment.

What powers does the Conference have? It takes decisions (recommendations and resolutions) which are binding on the statutory bodies of the Movement solely in respect of issues falling within the latter's exclusive competence, namely the interpretation and revision of the Statutes of the International Red Cross and Red Crescent Movement, its Rules of Procedure and disputes between its members. The Conference also ensures Red Cross *unity of effort* and respect for the Fundamental Principles.<sup>7</sup> It may confer mandates on the ICRC and the Federation with their agreement, though without modifying their Statutes.<sup>8</sup> On all other matters its authority is essentially a moral one and it can only issue recommendations. Those arrangements are in accordance with the spirit of the International Red Cross, one characteristic of which is the independence of its various components.

The International Conference's competence for handing down mandatory rules depends on whom those rules are intended for. It is broader in the case of the Red Cross or Red Crescent institutions than it is for States, and has greater implications for the ICRC and the Federation than for National Societies or States in that Conference resolutions concern the international aspect of the Movement as a whole. If adopted unanimously, however, such resolutions must be regarded as an expression of the international community's legal convictions.

Resolutions of the International Conference of the Red Cross therefore have some impact on international law which must be gauged on a case-by-case basis.

It is also through resolutions of the Conference that the Movement has set itself the Fundamental Principles which guide its work, and has branched out into new areas of activity.

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<sup>7</sup> Statutes of the International Red Cross and Red Crescent Movement, Article 10, *IRRC*, No. 256, January-February 1987, pp. 37-38.

<sup>8</sup> *Idem*, p. 39.

Lastly, the Conference has left its mark on the development of international humanitarian law. Historically, all draft revisions of the Geneva Convention, as well as draft new humanitarian law treaties, have always been submitted to the International Conference, which has endorsed them for transmission with its recommendations to a Diplomatic Conference qualified to adopt them.

Indeed, the International Conference has prompted decisive advances in that respect, and humanitarian law would not be what it is today without the Conference's own contribution. Moreover, the Conference has been and still is a forum for dialogue on the implementation of and respect for humanitarian law. Through its resolutions it has often been able to exert real pressure to restore respect for humanitarian law and put an end to violations it has condemned.

Discussions at International Conferences have also helped strengthen cooperation between the Red Cross and Red Crescent institutions and States to respond to the new challenges the Movement has had to face ever since its inception in 1863.

The protection of war victims, the organization of the International Red Cross and Red Crescent Movement and the limitation of warfare are but a few of the fields on which International Conferences have left their mark.

## PROTECTION OF WAR VICTIMS, REVISION OF THE GENEVA CONVENTIONS AND DEVELOPMENT OF INTERNATIONAL HUMANITARIAN LAW

### **Wounded and sick in armed forces in the field**

In 1863 the International Committee decided to take the lead and convene an International Conference in Geneva to consider ways of remedying the inadequacy of medical services of armies in the field.

That first International Conference of 1863 brought together 36 delegates, including representatives of 14 governments, and adopted as a basis for discussion the "Draft Covenant" prepared by the Geneva Committee. Its discussions concentrated on the organization of national committees — the future National Red Cross and Red Crescent Societies —

and, more particularly, on the possibility of sending voluntary nurses in the wake of armies.

The Geneva Committee's proposals were adopted in the form of ten resolutions and three recommendations addressed to governments,<sup>9</sup> which paved the way for the organization of the Movement and were the source of its Statutes. The adoption of those resolutions and recommendations marked a milestone in the development of humanitarian law and the protection of war victims. As Pierre Boissier so aptly wrote:

*"The resolutions and recommendations adopted at the conference of October 1863 constitute the fundamental charter for the relief of persons wounded in war. They are among the few fundamental texts which have positively influenced the destiny of man. They have not eliminated war but they have diminished its hold over man and have deprived it of innumerable victims".*<sup>10</sup>

He considered that this must be recorded to its credit in the annals of mankind.

The resolutions and recommendations of the Conference in 1863 laid the foundations for what was to become the International Red Cross and Red Crescent Movement but, since they were adopted by a conference without recognized competence, they were not binding upon States. In the following summer the Swiss government, at the ICRC's suggestion, therefore convened a Diplomatic Conference which adopted the Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field, of 22 August 1864. That marked the beginning of contemporary international humanitarian law.

The Geneva Convention was revised for the first time in 1906 and again in 1929 to take due account of the lessons of the First World War. Another revision, far more fundamental than its predecessors, took place after the Second World War and gave rise to the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, of 12 August 1949, which is still in force today.

During each revision, the International Conference played an essential part by examining the drafts prepared by the ICRC and stressing the importance it (the Conference) attached to the new provisions.

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<sup>9</sup> See text in the *International Red Cross Handbook*, op. cit., pp. 547-548.

<sup>10</sup> Pierre Boissier, *From Solferino to Tsushima: History of the International Committee of the Red Cross*, Vol. I, Henry Dunant Institute, Geneva, 1985, p. 80.

## Wounded, sick and shipwrecked members of armed forces at sea

It was also the International Conference that called for the principles of the Geneva Convention to be extended to war at sea. Consideration was given to the matter at the 1st, 2nd, 5th and 6th Conferences, held in Paris in 1867, Berlin in 1869, Rome in 1892 and Vienna in 1897 respectively,<sup>11</sup> and ultimately led to the Convention for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention, adopted at The Hague on 29 July 1899 and revised on 18 October 1907. This Convention, too, was revised in 1949 to incorporate the lessons drawn from the two World Wars. Thus came into being the Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, of 12 August 1949, which protects the shipwrecked and hospital ships.

## Prisoners of war

Was it not the mission of the Red Cross, which sought to bring help to wounded members of the armed forces, also to ease the moral sufferings entailed by captivity? Prince Demidoff made his convictions in that respect clear from the start and Henry Dunant himself, speaking at the 1st International Conference of Aid Societies for the Nursing of the War Wounded, held in Paris in 1867.<sup>12</sup>

Without actually going into the protection of and assistance to prisoners of war, the 2nd International Conference, held in Berlin in 1869, nonetheless adopted a resolution to the effect that in the event of war the International Committee should ensure the formation, at a suitably selected locality, of a correspondence and information bureau to facilitate

<sup>11</sup> *Conférences internationales des Sociétés de Secours aux Blessés militaires des Armées de Terre et de Mer, tenues à Paris*, 2nd edition, Commission générale des Délégués and Imprimerie Baillière & Fils, Paris, 1867 (hereinafter: *Première Conférence internationale, Compte rendu*), pp. 140-150 and 247-250; *Deuxième Conférence internationale, Compte rendu*, pp. 93-119 and 249-251; *Cinquième Conférence internationale des Sociétés de la Croix-Rouge tenue à Rome du 21 au 27 avril 1892, Compte rendu*, printed by Forzani, Rome, 1892, pp. 65-91, 214-229 and 409; *Sixième Conférence internationale de la Croix-Rouge, Vienne, 1897*, Austrian Red Cross Society, 1898, pp. 80-85, 175-181 and 247.

<sup>12</sup> *Première Conférence internationale, Compte rendu*, pp. 338-348.



by all means the exchange of messages between committees and the forwarding of relief.<sup>13</sup>

The scope of that resolution should not be underestimated, for it led to the creation of a body which has provided irreplaceable services, namely the Central Tracing Agency.

Indeed, ever since the Franco-Prussian War of 1870, the International Committee has been venturing along new paths, far beyond the tasks entrusted to the modest information bureau envisaged at the Berlin Conference. Moreover, the Basel Agency did not confine itself to assisting wounded and sick members of the armed forces but extended its activities to able-bodied prisoners of war.

This was no easy matter, however. Although the transmission of lists of able-bodied prisoners was an obvious humanitarian task which the Red Cross could not ignore, the new activity implied a reorientation of the Movement as a whole, for until then the Red Cross had dealt only with wounded and sick members of the armed forces and neither the resolutions of 1863 nor any subsequent resolution had called upon it to intervene on behalf of able-bodied prisoners.

The role of the Red Cross in assisting prisoners of war was broached at the 7th International Conference, held in St. Petersburg in 1902. It was discussed in the light of the Regulations relating to the Laws and Customs of War on Land, adopted by the First Peace Conference held at The Hague in 1899. Article 14 of the Hague Regulations provided for the setting up of national bureaux for information on prisoners of war, while Article 15 entrusted relief work on behalf of prisoners of war to voluntary institutions, the "Relief societies for prisoners of war" which, three years after the adoption of the Hague Convention, had still not been established!

The Central Committees in both Paris and St. Petersburg took the view that only the Red Cross was in a position to perform the tasks laid down by the Hague Regulations, since it alone could rescue prisoners of war from the abandonment and isolation that had always been part of captivity. To do so, a special commission should be set up within each National Society to take advantage of the Society's organization and contacts, but without drawing on the resources allocated to hospital care.<sup>14</sup>

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<sup>13</sup> Resolution IV/3, *Deuxième Conférence internationale, Compte rendu*, p. 254.

<sup>14</sup> *Septième Conférence internationale de la Croix-Rouge tenue à Saint-Petersbourg du 16 au 22 mai 1902, Compte rendu*, Russian Committee of the Red Cross Society, St. Petersburg, 1902, pp. 46-51.

As that proposal would mean a fundamental reorientation of the Red Cross, the Conference decided to refer it to the next Conference for consideration.

The issue was therefore raised again at the 8th International Conference, held in London in 1907. In the meantime, however, there had been two new developments. On the one hand, the National Societies had been examining their conscience and most of them had decided to assume the responsibility of assisting prisoners of war. Then again, during the recent Russo-Japanese conflict, both the Russian and the Japanese Red Cross Societies had helped able-bodied prisoners as well as wounded and sick members of the armed forces. The national information bureaux provided for in Article 14 of the Hague Regulations had therefore operated on both sides.

The 9th International Conference, held in Washington in 1912, ultimately decided the issue. After lengthy discussions of a subject which had absorbed the attention of three International Conferences (St. Petersburg in 1902, London in 1907 and Washington in 1912), the Red Cross decided to take over the tasks entrusted to the phantom societies of the Hague Regulations. And since, foreseeably, no belligerent State would readily agree to delegates of the adverse party's National Society providing relief to prisoners of their own nationality detained within its territory, it was agreed to entrust that task to ICRC delegates. Such was the purpose of Resolution VI of the Washington Conference, proposed by the French Red Cross and adopted unanimously.<sup>15</sup>

Three International Conferences thus took place before the Red Cross could decide to do, on an official and regular basis, what it had already done so successfully during the Franco-Prussian War of 40 years before.

However, the scope of Resolution VI of the Washington Conference should not be underestimated, for it is undoubtedly the most important of all decisions taken by the Red Cross since 1863.

By acknowledging the competence of the Red Cross to assist prisoners of war, the resolution set the institution on a new course of action which was to assume an unprecedented dimension. In addition, it altered the

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<sup>15</sup> *Neuvième Conférence internationale de la Croix-Rouge tenue à Washington du 7 au 17 mai 1912*, The American Red Cross, Washington, 1912 (hereinafter: *Neuvième Conférence internationale, Compte rendu*), p. 318.

relationship between the associations gathered under the red cross emblem.

From the start, the Red Cross had been both national and international. Its success was largely due to the fact that it had been able to maintain a balance between those dual aspects and avoid the pitfalls both of nationalism, which would have severed the bonds of solidarity between the Central Committees, and of internationalism, which would have cut it off from its own national roots. Indirectly, Resolution VI shifted the balance somewhat, for whereas hospital care constituted first and foremost a national activity, as did peacetime activities, assisting prisoners of war required closer cooperation at the international level.

Under Resolution VI of the Washington Conference, the ICRC was made responsible for visiting servicemen in captivity and distributing relief supplies destined for them. Tasks were thus assigned to it that went beyond mere liaison. The Washington resolution made the International Committee the linchpin of assistance to prisoners of war.<sup>16</sup>

Resolution VI came just at the right time. Moreover it contained an emergency clause, calling upon the special commissions responsible for providing assistance for prisoners of war to contact the ICRC within one year.<sup>17</sup> That one-year period was to prove too long; within five months, Resolution VI had to be put into initial effect when the Balkan Wars broke out. Europe was already headed for the First World War.

Since August 1914, the ICRC had been reminding all the National Societies of their commitments under Resolution VI of the Washington Conference and announcing the opening in Geneva of the International Prisoner-of-War Agency.

The expansion of ICRC activities during the First World War is well documented: the Agency communicated some 8 million items of information concerning prisoners of war, ICRC delegates carried out over 500 visits to prisoner-of-war camps and arranged for the transport and delivery of more than 1,800 wagonloads of relief supplies and, once the war was over, the ICRC played a decisive part in the repatriation of prisoners.<sup>18</sup>

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<sup>16</sup> Bugnion, *op. cit.*, pp. 80-87.

<sup>17</sup> *Neuvième Conférence internationale, Compte rendu*, p. 318.

<sup>18</sup> *Rapport général du Comité international de la Croix-Rouge sur son activité de 1912 à 1920*, Geneva, ICRC, 1921, 259 pages.

Over the same period, however, the Great War cruelly revealed the shortcomings of the Hague Regulations, which set out general principles rather than immediately applicable rules and did not provide for any control mechanism.

Immediately after the First World War, therefore, the ICRC began to prepare for revision of the Geneva Convention of 6 July 1906 and adoption of a new Convention to protect prisoners of war. Both items were entered on the agenda of the 10th International Conference of the Red Cross,<sup>19</sup> held at Geneva in 1921, and again on that of the 11th Conference,<sup>20</sup> which met in Geneva in 1923. The draft Conventions that emerged from the Conference in 1923 were transmitted to the Swiss Federal Council which, in July 1929, convened a Diplomatic Conference to review the Geneva Convention and prepare a new Convention to protect prisoners of war.

The Prisoner-of-War Code of 27 July 1929 rendered incalculable services throughout the Second World War. For millions of prisoners it meant the difference between captivity — admittedly hard enough to bear — and death. Its revision was nonetheless considered necessary after the Second World War to take account of the lessons of that unprecedented conflict. The result was the Geneva Convention relative to the Treatment of Prisoners of War, of 12 August 1949.

## Protection of civilians

The First World War had shown that war no longer took its toll among members of the armed forces alone, but that civilians were also being more severely affected than ever before. Territorial occupation, countless acts of violence and other excesses, internment and hostage-taking had created thousands of civilian victims who were not protected by the Geneva Convention of 1906.

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<sup>19</sup> Résolution XV, *Dixième Conférence internationale de la Croix-Rouge tenue à Genève du 30 mars au 7 avril 1921, Compte rendu*, Geneva, ICRC, 1921 (hereinafter: *Dixième Conférence internationale, Compte rendu*), pp. 218-221.

<sup>20</sup> XI<sup>e</sup> Conférence internationale de la Croix-Rouge, *Code des prisonniers de guerre*, pp. 16-42; *Onzième Conférence internationale tenue à Genève du 28 août au 1<sup>er</sup> septembre 1923, Compte rendu*, p. 198 (Resolution III).

Was it enough, once peace had been restored, to stigmatize practices which seemed to come from a bygone age, or was it better to work for a convention to protect civilians in the hands of the enemy, even if there was a risk of sanctioning, by regulation of them, forms of behaviour that were morally unacceptable but whose recurrence international law had proved powerless to prevent?

The ICRC resolutely opted for the second solution.<sup>21</sup> The 10th International Conference, held in Geneva in 1921, likewise recommended that governments should adopt a diplomatic convention without delay to protect prisoners of war, deportees, evacuees and refugees, and called upon the ICRC to prepare a preliminary draft.<sup>22</sup>

Convinced, however, that protection for prisoners of war and for civilian war victims had to be formulated in two separate texts, the ICRC submitted two draft conventions to the 11th International Conference, which took place in Geneva in 1923: one on prisoners of war, which eventually became the Convention of 1929 already discussed, and the other on civilians in enemy hands.

On the dubious grounds that the fate of civilians in enemy hands came under the laws of war and was not a matter for the Red Cross, the 11th Conference dismissed the draft Convention on civilians and simply adopted a recommendation without any practical significance.<sup>23</sup>

The ICRC tried to address the subject again at the 12th International Conference, but equally unsuccessfully. The Conference adopted a resolution that was as well-intentioned as it was ineffectual.<sup>24</sup>

Once more the ICRC raised the issue by submitting to the 15th International Conference, held in Tokyo in October 1934, a draft Convention on civilians of enemy nationality on territory belonging to or occupied by a belligerent.<sup>25</sup>

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<sup>21</sup> *Rapport général du Comité international de la Croix-Rouge sur son activité de 1912 à 1920*, pp. 173-176.

<sup>22</sup> Resolution XV, *Dixième Conférence internationale, Compte rendu*, pp. 218-221.

<sup>23</sup> Resolution VIII, *Onzième Conférence internationale, Compte rendu*, p. 200-201.

<sup>24</sup> Resolution XII, *Douzième Conférence internationale de la Croix-Rouge tenue à Genève du 7 au 10 octobre 1925, Compte rendu*, Geneva, ICRC, 1925 (hereinafter: *Douzième Conférence internationale, Compte rendu*), pp. 142-145 and 172-173.

<sup>25</sup> 15th International Conference of the Red Cross, *Draft Convention on the Status and Protection of Civilians of Enemy Nationality on the Territory of a Belligerent or on a Territory Occupied By It* (Document No. 9), Geneva, ICRC, 1934 (hereinafter: Tokyo Draft), 14 pages.

The draft contained general principles concerning *inter alia* permission to leave enemy territory and the banning of reprisals, deportation and the execution of hostages; it assured civilian internees of treatment at least equal to that of prisoners of war, and its provisions on the organization of monitoring were based on those of the Prisoner-of-War Code.<sup>26</sup>

The *Tokyo Draft*, as it is commonly known, was not above criticism. Its provisions on occupied territories, among other things, could be construed as very timid given the experience gained during the First World War. However, it limited the rights of captor and occupier alike and prohibited the more arbitrary and cruel measures, thus offering an invaluable safeguard to civilian war victims; lastly, and maybe most importantly, it provided a basis for supporting the action of Protecting Powers and of the ICRC itself.

The Tokyo Conference recognized the value of the draft and asked the ICRC to do everything necessary to arrive at a Convention on the subject.<sup>27</sup> The ICRC therefore transmitted the draft to the Federal Council, which undertook to consult the governments most directly concerned; several governments expressed their doubts and, in the view of Federal Councillor Giuseppe Motta, the French government in particular sent "a firm and definite refusal".<sup>28</sup> In the circumstances, the Federal Political Department concluded that "the auguries were insufficiently favourable" for any real chance of success and refused to convene a diplomatic conference.

Had the project completely foundered? The ICRC thought not. Immediately after the 16th International Conference, held in London in June 1938, it attempted to gain approval for several draft conventions, including in particular the one on the protection of civilians in enemy hands.

However, the rationale of war prevailed. The Diplomatic Conference which the London Conference had called for was unable to meet owing to Germany's attack on Poland, which meant that those civilians who fell into the hands of the adverse party during the Second World War were deprived of any convention-based protection against the dictates of the

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<sup>26</sup> Articles 1 to 25 of the Tokyo Draft.

<sup>27</sup> Resolution XXXIX, *Quinzième Conférence internationale de la Croix-Rouge tenue à Tokyo du 20 au 29 octobre 1934, Compte rendu*, Tokyo, Red Cross Society of Japan, 1934, pp. 202-209 and 262-268.

<sup>28</sup> André Durand, *From Sarajevo to Hiroshima: History of the International Committee of the Red Cross*, Vol. II, Geneva, Henry Dunant Institute, 1984, p. 292.

detaining or occupying power. Countless acts of persecution occurred, culminating in the horror of the concentration camps and genocide.

## **From the Geneva Conventions of 1949 to the Additional Protocols of 1977**

The Second World War had amply demonstrated the need to supplement the humanitarian conventions, especially with a view to providing proper protection for the civilian population.

After sending a memorandum to governments and National Societies on 15 February 1945, the ICRC submitted its initial drafts to the Preliminary Conference of National Red Cross Societies for the study of the Conventions and of various problems relative to the Red Cross, convened in Geneva from 26 July to 3 August 1945, and then to the Conference of Government Experts for the Study of Conventions for the Protection of War Victims, held in Geneva from 14 to 26 April 1947.

The International Committee then prepared four draft conventions, based on the findings of those two preparatory conferences and other consultations, relating to the wounded and sick in armies in the field (revision of the Geneva Convention of 27 July 1929), the wounded, sick and shipwrecked members of armed forces at sea (revision of the Hague Convention of 18 October 1907), prisoners of war (revision of the Convention of 27 July 1929) and for the protection of civilian persons in time of war.

Those drafts were submitted to the 17th International Conference, meeting in Stockholm from 20 to 30 August 1948, which referred them to its Legal Commission for consideration. The Commission examined them article by article and approved them, subject to a few amendments. The Stockholm Conference further recommended "that all Governments meet at the earliest possible moment in Diplomatic Conference for the adoption and signature of the texts now approved".<sup>29</sup>

Convened by the Federal Council, the Diplomatic Conference opened in Geneva on 21 April 1949<sup>30</sup> and completed its work on 12 August 1949

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<sup>29</sup> Resolution XIX (Draft International Conventions), *17th International Conference of the Red Cross, Stockholm, 20-30 August 1948*, Report, Swedish Red Cross, Stockholm, 1948, pp. 92-93.

<sup>30</sup> In the presence of 277 delegates representing 59 States, the ICRC and League experts were able to take part in the deliberations of the Conference, whereas the United Nations and other specialized agencies were admitted with observer status.

after adopting four Conventions for the protection of war victims, including a new one extending protection to civilians. These were:

- the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (First Convention);
- the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Second Convention);
- the Geneva Convention relative to the Treatment of Prisoners of War (Third Convention);
- the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Convention).

Two conclusions must be drawn with regard to the role of the 17th International Conference in formulating the Geneva Conventions. First, the Conference adopted the drafts practically as they had been prepared by the ICRC, i.e. harmonizing in four separate Conventions the Geneva Conventions of 1929 and the Hague Conventions of 1907. Second, it followed the ICRC's proposals for the protection of civilians, which went far beyond the Tokyo Draft. The Conference thus did much more than pave the way for the Diplomatic Conference of 1949: it presented the draft texts of the four new Conventions in their final form.

After the Geneva Conventions of 1949, of which it had been the architect, and especially the Fourth Convention protecting civilians in wartime had been adopted, the ICRC was all too well aware that the rules governing the conduct of hostilities had remained unchanged since the Second Peace Conference, held in The Hague in 1907. The rules on aerial bombardment in particular dated from the days of airships, so the protection of civilians and of non-combatants in general could clearly not be guaranteed without an updating of the rules governing the conduct of hostilities.

To remedy the situation, the ICRC prepared two draft additional protocols and submitted them to the 22nd International Conference of the Red Cross, which was held in Tehran from 8 to 15 November 1973. The Conference approved them without amendment and recommended that the next Diplomatic Conference convened by the Federal Council should adopt them as a basis for discussion.<sup>31</sup>

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<sup>31</sup> Resolution XIII, *XXIInd International Conference of the Red Cross, Teheran 8-15 November 1973, Report*, Teheran, Red Lion and Sun Society of Iran, 1973, pp. 122-123.



The Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts met in Geneva in four sessions from 1974 to 1977. It was attended by representatives of 124 States and a number of national liberation movements, and the ICRC was associated with its work in an expert capacity. The Conference completed its work on 10 June 1977 after adopting two additional protocols:

- the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I);
- the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II).

The Protocols additional to the Geneva Conventions came into force on 7 December 1978.<sup>32</sup> By 19 September 1995,<sup>33</sup> 186 States had become party to the four Geneva Conventions of 12 August 1949, 140 to Protocol I and 131 to Protocol II.

The International Conferences held since 1977 have adopted a series of resolutions calling on States which have not yet become party to the Additional Protocols to do so and requesting the ICRC and the National Societies to make those instruments known and encourage their ratification.<sup>34</sup>

## Red Cross action in the event of civil war

The American Red Cross must be credited with having prompted the first international consideration of Red Cross intervention in cases of internal conflict, for it was that Society which submitted to the 9th International Conference of the Red Cross, held in Washington in 1912, a report on the role of the Red Cross in the event of civil war or insurrection.<sup>35</sup>

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<sup>32</sup> *IRRC*, No. 207, November-December 1978, p. 336.

<sup>33</sup> Date on which Micronesia became party to the Geneva Conventions and the Additional Protocols.

<sup>34</sup> Resolution III (Geneva Conventions and Additional Protocols), *23rd International Conference, Bucharest, 1977*; Resolution VII (Protocols additional to the Geneva Conventions), *24th International Conference, Manila, 1981*; Resolution II (Protocols additional to the Geneva Conventions), *25th International Conference (Geneva, 1986)*.

<sup>35</sup> *Neuvième Conférence internationale, Compte rendu*, pp. 44-48.

The American Red Cross memorandum was a remarkable effort to reconcile the interests of victims, the impartiality and freedom of action of the Red Cross and the rights of the conflicting parties. The prerogatives of the legitimate government were also safeguarded. The draft moreover stressed that offers of service by National Societies of third countries must be of a philanthropic nature and could not be regarded as a recognition of belligerency, or even as a first step towards such recognition.

Although the draft nonetheless sparked a defensive reaction by several representatives of European governments, particularly that of Tsarist Russia, it was discussed within a Special Commission and then in plenary session. In order to avoid a vote which would have caused a rift within the Movement without enhancing the possibilities of Red Cross action, the Conference decided, however, not to express any opinion on the report submitted to it but merely to take cognizance of it.<sup>36</sup>

What most National Societies lacked was experience of relief action on behalf of victims of internal conflicts. Rather than time, a precedent was needed. The upheavals that followed the First World War were soon to provide the occasion for it.

Nine years elapsed between the Washington Conference and the 10th International Conference in Geneva in 1921. This lengthy period was marked not only by the First World War but also by the Russian civil war, the Hungarian revolution and Spartacism in Germany, all civil war situations in which the Red Cross intervened without hesitation.

It was henceforth agreed as a matter of principle that the Red Cross was competent to assist victims of insurrections and civil wars. The inclusion of this item on the agenda of the 10th Conference was intended to prompt consideration of how, and not whether, such intervention should take place.

Reports were submitted to the Conference by several National Societies,<sup>37</sup> virtually all of which had been confronted by civil wars or internal disturbances. In addition, the ICRC had devoted a chapter of its General Report to its interventions in Russia and Hungary.

Although they referred to widely differing experiences, the reports submitted by the National Societies revealed many points of convergence,

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<sup>36</sup> *Idem*, pp. 47 and 199-208.

<sup>37</sup> The National Societies of Finland, Germany, Italy, Poland, Portugal, Russia (former organization), Turkey and Ukraine.

including the fact that Red Cross competence for assisting the victims of war or civilian disturbances was considered self-evident.

Provided that the principle of impartiality was duly observed, the reports also expressed the view that the victims of a civil war should be assisted first and foremost by the National Society of the country concerned, though to do so with any chance of success it was essential that it retain complete independence, both from the political authorities and from the parties and factions involved.

It would, however, have been unreasonable to expect the National Society of a country disrupted by civil war to succeed indefinitely in dissociating itself from the struggle and carrying out its mission in a situation where the very State itself might disintegrate. Provision therefore had to be made for the intervention of a neutral international body capable of pursuing humanitarian action at the national level and, if necessary, preserving the independence and inviolability of the Red Cross vis-à-vis the respective parties. Lastly, assistance had to be organized at the international level. Presumably the ICRC would be requested to play this essential and natural intermediary role — a conclusion reached *inter alia* in the report by the German Red Cross.

The National Society reports thus gave the ICRC pride of place, stating the view that it should not only serve as the focal point for the organization of relief at the international level but also continue action at the national level if a National Society became paralysed. Those at least were the conclusions reached by the German Red Cross, the Italian Red Cross, the Ottoman Red Crescent and the Russian Red Cross (former organization).

The reports by the National Societies were submitted to the Conference's Third Commission, whose conclusions confirmed the analyses set out therein: on the one hand, the Red Cross had the right and duty to assist all victims of civil war; on the other, the National Society of a country stricken by civil war was primarily responsible for assisting the victims thereof; the independence and complete freedom of action of that Society should be respected; and, lastly, the ICRC was responsible for organizing relief at the international level.<sup>38</sup>

The Third Commission's conclusions were adopted without discussion by the plenary Conference, which also adopted six resolutions; these

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<sup>38</sup> *Dixième Conférence internationale, Compte rendu*, p. 159.

were grouped together in Resolution XIV, which bears the title "Civil War".

What conclusions may be drawn from Resolution XIV as adopted by the 10th International Conference in 1921? Three facts stand out:

First, the Russian civil war, which had just ended, had been one of the main concerns of the Conference; even though there were few direct references to it, the allusions were too transparent to be misunderstood.

Secondly, despite its clumsy drafting, Resolution XIV should not be underestimated. It is one of the most important texts in the history of the Red Cross, opening up a new field of action in a domain which international law had failed to codify. For over a quarter of a century, it was the only text on which the Red Cross could base its assistance to the victims of internal conflicts.<sup>39</sup>

Lastly, Resolution XIV spectacularly confirmed the position of the ICRC, to which the Conference entrusted the mandate of intervening in relief work in the event of civil war. The ICRC thus emerges not only as the hub of relief action in the event of civil war but also as the authorized representative of the Movement as a whole.<sup>40</sup>

During the Upper Silesian conflict and the Spanish war, however, the ICRC went far beyond the organization of relief as envisaged in Resolution XIV of the 10th International Conference and, in both those internal conflicts, endeavoured to gain respect for a minimum of humanitarian rules while actively helping to put them into practice. In a way, it transposed the operational pattern it had developed during conflicts between States and tried, often successfully, to cover the entire field of activity within the scope of the Geneva and Hague Conventions, which it constantly claimed should be applied by analogy.

It can thus be seen that the ICRC's policy and practical work are determined by its right to take any humanitarian initiative, for that is what comes into play here. It is even one of the factors which have contributed most directly to the development of contemporary humanitarian law.

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<sup>39</sup> For instance, during the Upper Silesian conflict in 1921 and the Spanish civil war of 1936-1939.

<sup>40</sup> Bugnion, *op. cit.*, p. 301.

The 16th International Conference, held in London in June 1938 under ominously darkening skies,<sup>41</sup> was to provide admittedly guarded support for the ICRC's new proposals regarding assistance in times of civil war.

Drawing on its experience in Upper Silesia, Ireland and Spain, the ICRC submitted a report to the Conference on the role and activity of the Red Cross in time of civil war. This report emphasized and enlarged on Resolution XIV of the International Conference of 1921 and drew attention to the diversity of the situations envisaged, which far exceeded situations of armed conflict alone. It was accompanied by a draft resolution designed not only to determine the possibilities and conditions of Red Cross intervention in the event of internal strife, but also to define guiding principles for the behaviour of combatants towards victims of conflict.

That draft resolution was certainly one of the most complete texts ever proposed to establish a legal regime applicable to internal conflicts in which there is no recognition of belligerency. It constituted a draft set of genuine regulations for the protection of victims of internal strife.

The fact that the ICRC report was sent in advance to all National Societies in February 1938 led the Spanish Red Cross in Madrid to publish a report on the same subject. On the basis of its experience during the civil war in its own country, the Spanish Red Cross demonstrated the need for the ICRC to intervene in the event of civil war as the sole neutral intermediary capable of taking effective action in such situations.

The reports by the ICRC and the Spanish Red Cross were submitted to the Conference's Legal Commission, which examined them in depth. Eventually, a compromise solution was reached. In Resolution XIV, which was voted without discussion and in plenary session, the 16th International Conference recalled Resolution XIV adopted by the 10th Conference in 1921 and invited the ICRC to continue its efforts to obtain the application of the two Geneva Conventions of 1929 and the Xth Hague Convention of 1907 to victims of civil wars. However, the resolution deferred the adoption of a more binding text and requested the ICRC, making use of its own practical experience, to continue its study of the problems raised by civil war as regards the Red Cross.<sup>42</sup> It was thus a kind

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<sup>41</sup> The Sino-Japanese war, the annexation of Austria and the Sudetenland crisis were already foreshadowing the profound upheavals that led to the Second World War.

<sup>42</sup> Resolution XIV, *16th International Conference of the Red Cross, London, 20-24 June 1938, Report*, The British Red Cross Society, London, 1938, pp. 85-87 and 104.

of exhortation in which the Conference paid tribute to the work spontaneously undertaken by the ICRC on behalf of victims of internal conflicts and encouraged it to continue its activity in that connection, but without giving it the legal basis it wished to have for that activity.

In short, rather than risk a split over a text more clearly defined in scope, the Conference opted for the unanimous adoption of one that was bland enough to pass unopposed. But the need for a codification of the law applicable to internal conflict could not be postponed for long. It fell to the Diplomatic Conference responsible for revising the Geneva Conventions after the Second World War to resolve the issue. It did so by adopting Article 3 common to the four Geneva Conventions of 12 August 1949.

## ORGANIZATION OF THE MOVEMENT

### **The Movement's Statutes**

Until the end of the First World War, the legal structure of the Red Cross was relatively slender, consisting of the resolutions of the founding Conference of October 1883, which the ICRC and the National Societies considered binding, a few resolutions of a regulatory nature adopted by International Conferences of the Red Cross, and a number of tacit rules imposed by the nature and aims of its work. Each International Conference adopted its own rules of procedure, using previous ones as a guide. Thus at the statutory level, the International Red Cross was governed by rules that were to a large extent customary.<sup>43</sup>

With the founding of the League of Red Cross Societies arose the question of the Movement's organization at the international level, for the coexistence of two bodies at that level necessitated a rational sharing of tasks and responsibilities, as well as a clear demarcation between the position of the ICRC and that of the League within the Movement. The Red Cross as a whole had to adopt a statutory structure designed to safeguard the unity of the Movement and harmonize the activities of the National Societies, the ICRC and the League.

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<sup>43</sup> Bugnion, *op. cit.*, p. 418.

This is no place for a detailed account of those difficult negotiations.<sup>44</sup> Once all possibilities of merging the ICRC and the League had been explored in vain, it was eventually concluded that both should continue to exist as mutually complementary organizations. No attempt should be made to amalgamate them into a single body; each of them should be assigned a well-defined field of activity and they should form part of a larger institution, the International Red Cross.

A set of draft Statutes drawn up by Professor Max Huber, then a member of the Committee, and by Colonel Draudt, Vice-President of the League, were adopted by the 13th International Conference at The Hague in October 1928.<sup>45</sup>

Although for the most part the Statutes of the International Red Cross did no more than confirm the *status quo*, the delegates meeting in The Hague firmly believed that they had laid the foundations of a veritable international organization by giving the Red Cross statutory bodies vested with clearly defined powers.

The Statutes of the International Red Cross were revised at the 18th International Conference, held in Toronto in 1952. The main amendments were designed to give a more explicit definition of the respective competences of the ICRC and the League and to develop cooperation between the two institutions.<sup>46</sup>

The Statutes were again revised at the 25th International Conference,<sup>47</sup> held in Geneva in 1986.

The basic tenor of the Statutes remained unchanged, although the Conference replaced the term "International Red Cross" by "International Red Cross and Red Crescent Movement" to reflect the principle of the National Societies' equality, a principle that had been recognized from the beginning.

It is not the purpose of this article to explain the content or offer an analysis of the Statutes.<sup>48</sup> It should, however, be noted that the Statutes

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<sup>44</sup> André Durand, *op. cit.*, describes the history of these negotiations, pp. 139-194.

<sup>45</sup> The draft was adopted unanimously with five abstentions; four National Societies expressed reservations over one of the articles — *Treizième Conférence internationale de la Croix-Rouge, tenue à La Haye du 23 au 27 octobre 1928, Compte rendu*, Imprimerie nationale, The Hague, 1929, pp. 12-19, 48-75, 85, 101-114, 117-118 and 182-186.

<sup>46</sup> Frédéric Siordet, "La XVIII<sup>e</sup> Conférence internationale de la Croix-Rouge", *Revue internationale de la Croix-Rouge* (hereinafter *RICR*), No. 405, September 1952, pp. 761-762.

<sup>47</sup> Resolution XXXI, *25th International Conference of the Red Cross, Geneva, 23-31 October 1986, Report*, Swiss Red Cross, Bern, 1986, pp. 121-122 and 166.

<sup>48</sup> See Bugnion, *op. cit.*, pp. 418-424.

adopted by the 13th International Conference of the Red Cross in 1928 and subsequently revised by the 18th and 25th International Conferences have stood the test of time. For more than three-quarters of a century they have provided and continue to provide the framework for the development of the International Red Cross and Red Crescent Movement, just as the Fundamental Principles have done in the moral sphere.

## The Fundamental Principles

From the very start, the Red Cross was aware of following a number of fundamental principles dictated by the aims of the institution and the nature of its proposed activities. To a large extent these principles were expressed in the resolutions and recommendations of the Conference of 1863 and in the Geneva Convention of 1864.

In 1869, the Berlin Conference asked the International Committee to ensure that the principles were upheld and disseminated. But it was only in 1874 that Gustave Moynier, President of the ICRC, attempted for the first time to formulate the Fundamental Principles, namely *centralization* (only one Society in each country), *preparedness* (each Society should prepare for its activities in the event of war), *neutrality* (with regard to victims) and *solidarity* (between Societies).

When revising its own statutes after the First World War, the ICRC included the mention of four “*fundamental and uniform principles which are at the basis of the Red Cross institution, namely: impartiality, political, religious and economic independence, the universality of the Red Cross and the equality of its members*”.<sup>49</sup>

These principles are mentioned, in almost identical wording, in Article 10 of the “Conditions for the recognition of National Red Cross Societies” approved by the 17th International Conference of the Red Cross (Stockholm, 1948), and in Article VI, para. 2, of the Statutes of the International Red Cross, revised by the Toronto Conference in 1952.

To the four existing principles, however, the League’s Board of Governors meeting in Oxford in 1946 (XIXth session) and Stockholm in

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<sup>49</sup> Statuts du Comité international de la Croix-Rouge, 10 mars 1921, Article 3, *RICR*, No. 28, April 1921, pp. 379-380.



1948 (XXth session) added 13 others, in which the aims of the Red Cross, its fundamental principles and some rules of procedure were jumbled together.

The Toronto Conference endorsed this new statement of principles, while stressing that the four original principles remained “the corner-stone of the Red Cross” — a remark that only added to the confusion.

Universally acceptable wording nonetheless had to be found. The Standing Commission decided to set up a joint ICRC-League commission for the purpose. On the basis of the resolutions of past Conferences and, in particular, the work accomplished by Max Huber and Jean Pictet, the joint commission prepared a draft of seven articles which was sent to all National Societies and approved unanimously by the Council of Delegates, meeting in Prague in 1961. The draft was then submitted to the 20th International Conference (Vienna, 1965), where it was adopted unanimously under the title “*Proclamation of the Fundamental Principles of the Red Cross*”.<sup>50</sup>

Since then, the Fundamental Principles — humanity, impartiality, neutrality, independence, voluntary status, unity and universality — have been solemnly read out at the opening ceremony of each International Conference and are recognized as the Movement’s basic charter.

The Fundamental Principles proclaimed by the 20th International Conference and reaffirmed by the 25th Conference are mandatory for all Red Cross and Red Crescent bodies. The representatives of the States party to the Geneva Conventions who attend the Conference must respect the principles in the same way as all the other delegations.<sup>51</sup>

## Recognition of National Societies

Since 1876 the International Committee, as the founding body of the Red Cross and custodian of its principles, has applied a systematic procedure for the recognition of any new National Society wishing to become a member of the Movement.<sup>52</sup>

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<sup>50</sup> Resolution VIII, *20th International Conference of the Red Cross, Report*, pp. 51-52 and 99-100.

<sup>51</sup> See Article 11 (4) of the 1986 Statutes of the Movement, *IRRC*, No. 256, January-February 1987, p. 38.

<sup>52</sup> Dates of foundation and of recognition by the ICRC of the National Red Cross and Red Crescent Societies (internal document of the Division for Principles and Relations with the Movement), Geneva, ICRC, June 1994, p. 10.

By sending out circulars, the ICRC notified the National Societies of the foundation of any new Society, which became a member of the Movement after having met specific criteria: no equivalent and previously recognized Red Cross or Red Crescent Society already in existence (*criterion of unity*), sound management of the applicant Society and official recognition of it by the public authorities of its country (*criterion of independence*), and willingness of the applicant Society to take part in the activities of a universal Movement and respect its principles and ideals (*criterion of universality*).

On the basis of those provisions, in 1947 a joint commission of ICRC and League representatives prepared a draft confirming the previous practice and laying down the conditions that any new Society must meet to become a member of the Movement. The draft was adopted by the 17th International Conference of the Red Cross in Stockholm in 1948.<sup>53</sup>

That resolution by the Stockholm Conference codified, within the framework of the Movement as a whole, a practice established by the ICRC as early as 1876. It also placed all National Societies on an equal footing, since all of them, even those already recognized, are required to meet the conditions for recognition.<sup>54</sup>

Lastly, it should be noted that the 17th Conference did not challenge the ICRC's competence in the matter: the International Committee itself decides on the recognition of any new National Society, even though it does so on the basis of a prior examination carried out in close consultation with the International Federation of Red Cross and Red Crescent Societies.

## Principles and rules in the event of disasters

The steady expansion of relief activities by the National Societies and their Federation during natural or technological disasters made it necessary to adopt rules for such operations in order to ensure mutual coordination of efforts and overall efficiency.

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<sup>53</sup> Resolution XI (c) (Conditions for the recognition of National Societies), 17th International Conference, Stockholm, 1948. The *International Red Cross Handbook* may be consulted for the text of the ten conditions for recognition (pp. 497-498).

<sup>54</sup> The case arises, for instance, when a National Society amends its own statutes and submits the text to the Joint ICRC-League Commission for National Society Statutes.

The *Principles and Rules for Red Cross Disaster Relief* were adopted at the 21st International Conference of the Red Cross in 1969.<sup>55</sup> Since then, every International Conference has taken decisions revising the *Principles and Rules* in order to adapt them to new situations and strengthen cooperation between the Federation, the National Societies and the ICRC in that specific field.<sup>56</sup>

The 1991 Council of Delegates, in its Resolution 17, furthermore approved the drafting of a *Code of Conduct* for the International Red Cross and Red Crescent Movement and non-governmental organizations. That *Code*, which seeks to set principles of conduct applicable to all organizations taking part in disaster relief, will be submitted to the 26th International Conference to be held in Geneva this December.

## **Other activities of the Movement covered by resolutions adopted by the International Conference**

Besides the Movement's Statutes and general organization, the International Conferences have adopted many resolutions to encourage and develop the activities of the Red Cross and Red Crescent.

It is not possible to go into detail here on the diverse areas of activity discussed by the International Conferences; to cite only a few at random, they have included the financing of the ICRC and the Federation, youth, voluntary service, exemption from customs duties and other facilities accorded to Red Cross staff, regional conferences, funds and medals, the press, blood transfusions, the fight against drug and tobacco addiction and even environmental protection.

## **Limitations on warfare**

Faced with the major conflicts of our times, the International Conferences could not remain indifferent to the devastation wrought thereby or,

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<sup>55</sup> Resolution XXIV (Principles and Rules for Red Cross Disaster Relief), 21st International Conference, Istanbul, 1969.

<sup>56</sup> Decision I, 22nd International Conference, Tehran, 1973; Decision I, 23rd International Conference, Bucharest, 1977; Decision I, 24th International Conference, Manila, 1981; Resolution XXXIII, 25th International Conference, Geneva, 1986.

more particularly, to the pernicious effects of technological developments in weaponry.

The post-war Conferences have consequently adopted many resolutions, often at the initiative of the ICRC, to limit or ban the use of weapons of mass destruction (chemical, bacteriological and nuclear weapons) and highlight the terrible threat such weapons pose to mankind.<sup>57</sup>

The 26th International Conference of the Red Cross and Red Crescent, to be held in Geneva early in December 1995, will pursue these efforts to ban certain such weapons and, in particular, the manufacture and use of anti-personnel mines.

These words on the limitation of warfare would not be complete without an unfortunately all too brief reference to the Red Cross contribution to peace. This subject, too, has been addressed by the International Conferences, which have adopted many resolutions to encourage peace initiatives, international rapprochement<sup>58</sup> and the struggle against racial discrimination and prejudice.<sup>59</sup>

## A SUMMING-UP

Any account of the International Conferences must include a mention of the political problems they have had to face in the past. They have, it is true, sometimes been beset by political quarrels which have poisoned the atmosphere and paralysed their work, a fact which can only be deplored.

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<sup>57</sup> Resolution XXIV of the *17th International Conference of the Red Cross, Stockholm, 1948*; Resolution XXVIII of the *18th Conference, Toronto, 1952*; Resolution XVIII of the *19th Conference, New Delhi, 1957*; Resolution XXVIII of the *20th Conference, Vienna, 1965*; Resolution XIV of the *21st Conference, Istanbul, 1967*; Resolution XIV of the *22nd Conference, Tehran, 1973*; Resolution XII of the *23rd Conference, Bucharest, 1977*, and Resolution XIII of the *24th Conference, Manila, 1981*.

<sup>58</sup> See *inter alia* Resolution XXXVII (The Red Cross as a Factor for World Peace), *19th International Conference, New Delhi, 1957*; Resolution X (The Red Cross as a Factor in World Peace), *20th International Conference, Vienna, 1965*; Resolution XXI (The Red Cross as a Factor in World Peace), *21st International Conference, Istanbul, 1969*; Resolutions XXVI and XXVII (Role of the Movement and Peace), *25th International Conference, Geneva, 1986*.

<sup>59</sup> Resolution XXXIV (Campaign against Prejudice and Discrimination), *19th International Conference, New Delhi, 1957*; Resolution X (Elimination of Racial Discrimination), *22nd Conference, Tehran, 1973*.

There are various instances of this: the ideological controversies after the Korean war that emerged at the 18th Conference, held in Toronto in 1952, the question of Chinese representation at the 19th International Conference, held in New Delhi in 1957 and, more recently, the exclusion of the government delegation of the South African Republic from the 25th International Conference, held in Geneva in 1986, and the problem of Palestinian representation which led to the postponement of the 26th International Conference in 1991<sup>60</sup> are but a few of the setbacks which the International Conferences of the Red Cross have encountered and which have threatened the unity of the Movement.

However, those events — some of which were widely publicized — should not overshadow the many achievements of the Conferences themselves. Humanitarian law and action would not have become what they are today without the impetus given by the International Conference of the Red Cross and Red Crescent, which remains the prime international forum for addressing humanitarian issues.

The International Conferences provide a unique opportunity for alerting States to the needs of the victims whom the Movement seeks to help. Admittedly, the dialogue with States is not confined to those few days every four years, but the big difference between bilateral contacts and the Conference is that the latter takes decisions which have a bearing upon the international community as a whole.

The Conference also obliges the governments to state publicly where they stand on the general or particular problems put before them. Any move to develop humanitarian law or to strengthen its implementation must perforce be dealt with by the International Conference. It is also at the International Conference that the international community makes commitments on National Society matters, in particular the development of the weakest among them.<sup>61</sup>

## **Hopes placed in the 26th International Conference of the Red Cross and Red Crescent**

The 26th International Conference thus hopes to resume such consideration at a more general level and examine what can be done to help the

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<sup>60</sup> Only the Council of Delegates was able to meet and discuss some of the items on the Conference's agenda.

<sup>61</sup> Yves Sandoz, "Apropos of the postponement of the 26th International Conference of the Red Cross and Red Crescent", *IRRC*, No. 286, January-February 1992, p. 6.

most vulnerable persons, to attenuate and prevent crises and, lastly, to strengthen the Movement and mobilize the public in support of its work.

To attenuate and prevent crises, the forthcoming Conference must secure greater respect for international humanitarian law during armed conflict, while remaining aware of the magnitude of the task and careful not to overreach itself.<sup>62</sup>

But the Conference also enables our Movement to give evidence of the energy with which it intends to develop its member National Societies in order to assist victims more effectively and thus fulfil the ideals it has embraced ever since its inception in 1863. While promoting the network of National Societies as an essential tool for aiding the most vulnerable and thus for preventing crises, the Movement must also demonstrate its willingness to promote internal solidarity among its members.

Hence the importance of convincing all the participants in the Conference to make proper use of it as a forum for debate and for promoting humanitarian action and the protection of the world's most vulnerable people, and not as a sounding board for political causes.

As a humanitarian forum, what we can expect it to do is to highlight intolerable situations, identify appropriate short- and long-term measures for improving the lot of vulnerable people and, in such situations, make a firm commitment to provide the means necessary to implement those measures.

The Conference must therefore become a mobilizing force for all peoples, at the same time giving them an opportunity to express their solidarity with those who suffer and their wish to agree on specific commitments concerning areas where progress seems possible.

The success of the Conference, however, will depend most of all on the attitude of all the components of our Movement. They are the ones who must mobilize the public at large and the governments of every country worldwide by using the Conference to defend those whom they seek to help, and by creating support and approval for their action. They are also the ones who must imbue the Conference with the spirit of our Movement, making it a special event that stands apart from run-of-the-mill diplomatic meetings.

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<sup>62</sup> Yves Sandoz, "The 26th International Conference of the Red Cross and Red Crescent: Myth and Reality", *IRRC*, No. 305, March-April 1995, pp. 129-136.

Our Movement will meet this challenge if it presents a united front, not by masking its diversity but rather by making the strength of its complementarity evident. It will thus be able to approach the Conference with confidence, viewing it as a constructive and forward-looking event for every participant. If our Movement goes about its preparations in this frame of mind it will, together with the governments, contribute to the success of this meeting in which so much hope has been placed.

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# The protection of water in times of armed conflict

by Ameer Zemmali

“Water, thou hast no taste, no colour, no odour; canst not be defined, art relished while ever mysterious. Not necessary to life, but rather life itself (...) Of the riches that exist in the world, thou art the rarest and also the most delicate - thou so pure within the bowels of the earth!”<sup>1</sup>

## Introduction

Water, life-giving and bounteous, the symbol of fertility and purity, is also a source of fear, risk and danger, of covetousness and conflict. Serving many purposes, all equally necessary, it constitutes a vital resource of which man has always tried to regulate the use and management. But unlike peacetime legislation, reflected in the customs and practices of the most ancient societies as well as in the domestic and international legal instruments of modern times, the law of armed conflicts has devoted only few of its provisions expressly — and belatedly — to water.<sup>2</sup> This

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<sup>1</sup> Antoine de Saint-Exupéry, *Wind, Sand and Stars*, Penguin Books Ltd., Harmondsworth, England, 1969, p.140 (*Terre des Hommes*, Gallimard, Paris, 1939).

<sup>2</sup> There are few works dealing with the question, all the more credit being due to the *International Law Association*, which, at its 57th Conference in Madrid in 1976, adopted a resolution on the protection of water resources and water installations in times of armed conflict. See the text of the resolution in: *International Law Association*, Report of the Fifty-seventh Conference held at Madrid (August 30th, 1976, to September 4th, 1976), 1978, p. xxxiv. In 1966, the Association had already adopted the Helsinki Rules on the



is not so much a criticism as an observation and may be explained by the fact that water is indispensable in all circumstances. Apart from the consequences of natural disasters, when water may be either threatening or threatened, some human activities can harm the environment and impair the population's means of survival, of which water is the most essential. The effects of pollution or armed conflict are a case in point. The experience of modern warfare has shown, alas, that the civilian population and civilian objects are exposed to military operations and that in some cases thirst can prove to be more deadly than weapons.<sup>3</sup> The only remedy lies in respect for the universally recognized rules, and in the following article attention will be drawn to the provisions of humanitarian law which apply to the protection of water in wartime (I). Leaving aside considerations pertaining to *jus ad bellum* (water as a source of conflict) or water-related conflict situations,<sup>4</sup> we shall then look at some practical aspects with particular reference to the role of the ICRC and the other components of the International Red Cross and Red Crescent Movement (II), before concluding with a few general remarks (III).

## I. The protection of water in international humanitarian law

International humanitarian law is known to protect certain categories of persons and objects. It does not contain any specific rules regarding water, since the latter comes under peacetime law. Nevertheless, hostilities may also affect water and certain rules of humanitarian law, contain-

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uses of waters of international rivers", in which Article 20 was worded as follows: "*In times of war, other armed conflict, or public emergency constituting a threat to the life of the State, a riparian State may take measures derogating from its obligations under this Chapter to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law. The riparian State shall in any case facilitate navigation for humanitarian purpose*".

<sup>3</sup> This issue will be on the agenda of the 26th International Conference of the Red Cross and Red Crescent (Geneva, 3-7 December 1995) which will be concerned *inter alia* with the protection of the civilian population and of items indispensable for its survival.

<sup>4</sup> Recent works covering some aspects of the question include: Jacques Sironneau, "L'eau ressource stratégique", in *Géopolitique*, No. 43, autumn 1993, Christian Chesnot, *La bataille de l'eau au Proche-Orient*, Paris, l'Harmattan, 1993; Ali Ihsan Bagis (ed.), *Water as an Element of Cooperation and Development in the Middle East*, Ayna Publications, Istanbul, 1994; Stefan Klötzli, "The Water and Soil Crisis in Central Asia — a Source of Future Conflicts?", *Center for Security Studies and Conflict Research*, ETH, Zurich, May 1994.

ing specific prohibitions, must be applied to it (A). There are further provisions explicitly stating that water is indispensable to the basic needs of protected persons (B). Lastly, due note must be taken of the role of civil defence organizations, as laid down in 1977 Protocol I (C).

### **(A) Prohibitions relating to the conduct of hostilities**

Besides the general protection applicable to all civilian objects, water as an element indissociable from the environment is covered, albeit indirectly, by all the protective rules which apply to the latter.<sup>5</sup> Without dwelling on the environmental aspect, mention must be made of four basic prohibitions with a direct bearing on the present subject. They relate to the use of poison as a means of warfare (1), the destruction of enemy property (2), attacks on objects indispensable to the survival of the civilian population (3) and attacks on installations containing dangerous forces (4).

#### ***(1) Prohibition of the use of poison***

This customary rule is enshrined in the Hague Regulations, where Article 23 (a) stipulates that it is forbidden "to employ poison or poisoned weapons". The earlier Lieber Code (1863), destined for the

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<sup>5</sup> Both customary law and treaty law contain rules which apply to the protection of the environment in wartime. In addition to Articles 35, para. 3, and 55 of 1977 Protocol I and the Convention on the Prohibition of Military or Any Other Hostile Uses of Environmental Modification Techniques, adopted by the UN General Assembly on 10 December 1976, there are some other rules and instruments which are worth mentioning. It is well established that belligerents do not have an unlimited right to adopt means of injuring the enemy (Regulations annexed to the Hague Convention No. IV of 1907, Article 22, and 1977 Protocol I, Article 35, para. 1). The same principle is reasserted in Resolution XXVIII of the 20th International Conference of the Red Cross (Vienna, 1965) and in the Preamble to the 1980 Convention on the use of conventional weapons, referred to below. There is also the rule prohibiting any destruction of enemy property unless demanded by the necessities of war (see below, section 2). Texts relating to the prohibition or limitation of the use of certain types of weapons include: the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare (Geneva, 17 June 1925), the Convention on the Prohibition of Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction (London, Moscow, Washington, 10 April 1972), the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects and its Protocols I, II and III (Geneva, 10 October 1980) and the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and their Destruction (signed in Paris on 13 January 1993).

United States armed forces, had already stipulated that military necessity "does not admit of the use of poison in any way, nor of the wanton devastation of a district".<sup>6</sup> The Brussels Declaration (1874) and the Oxford Manual, adopted by the Institute of International Law in 1980, both contain the same rule.<sup>7</sup> Even though the text does not refer directly to water, the prohibition extends to that vital substance, especially as it is general in scope and does not relate only to weapons.<sup>8</sup>

## ***(2) Prohibition of the destruction of enemy property***

Water may be part of either public or private property. Codifying a well established rule, the Hague Regulations, in Article 23 (g), state that it is forbidden "to destroy or seize the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war". The same principle reappears in the Charter of the International Military Tribunal of Nuremberg and in the Fourth Geneva Convention of 1949.<sup>9</sup> In the latter, the "extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly" is qualified as a "grave breach", and thus as a war crime.<sup>10</sup> This rule is endorsed by other provisions, such as the prohibition of the confiscation of private property<sup>11</sup> and the prohibition of pillage,<sup>12</sup> which applies to the territories of enemy powers and to occupied territories.

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<sup>6</sup> Lieber Code, Article 16.

<sup>7</sup> Articles 13 (a) and 8 (a), respectively.

<sup>8</sup> It is interesting to note that Islamic law explicitly forbids the poisoning of water (cf. M.A. Marin, "The evolution and present status of the Laws of War", *Course texts of the Academy of International Law of The Hague*, Volume 92, 1957 (II), p. 657), even though classical doctrine admits the act of submerging enemy fortifications (Tabari, *Ikhtilaf*, ed. J. Schacht, Leiden, 1933, pp. 6-7). The Declaration adopted by the International Institute of Humanitarian Law of San Remo (1990) on the rules of international humanitarian law governing the conduct of hostilities in non-international armed conflicts extends to such conflicts the prohibition of "*the use of poison as a means or method of warfare*" (section B, paragraph 3). (For the text of the Declaration, see *IRRC* No. 278, September-October 1990, p. 404).

<sup>9</sup> Articles 6 (b) and 53, respectively.

<sup>10</sup> Fourth Geneva Convention, Article 147.

<sup>11</sup> The Hague Regulations, Article 46.

<sup>12</sup> *Ibid.*, Articles 28 and 47, and Fourth Geneva Convention, Article 33, para. 2. The law of non-international armed conflict also prohibits pillage (1977 Protocol II, Article 4, para. 2(g)).

**(3) *Prohibition of the destruction of objects indispensable to the survival of the civilian population***

The innovation introduced by the provisions adopted in 1977 is very significant. It is designed to protect objects indispensable to the survival of the civilian population, quoting as examples “foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, *drinking water installations and supplies and irrigation works*”.<sup>13</sup> Only imperative military necessity entitles a warring party to destroy indispensable objects, with the proviso that they must be situated within territory under its own control.<sup>14</sup> The words used to designate acts likely to harm such objects are intended to cover all possibilities (“it is prohibited to attack, destroy, remove or render useless” such objects), including pollution, by chemical or other agents.<sup>15</sup> The same formula is used in Article 14 of Protocol II, which quotes as examples of indispensable objects “drinking water installations and supplies and irrigation works”.

A derogation from the immunity of indispensable objects is allowed only if they serve as sustenance solely for the members of the armed forces or in direct support of military action. Even in those cases, belligerents have to abstain from any action which may be expected to reduce the civilian population to starvation or deprive it of vital water supplies.<sup>16</sup> Reprisals against indispensable objects are forbidden.<sup>17</sup> It is unfortunate that this prohibition does not appear in Protocol II.

**(4) *Prohibition of attacks on works and installations containing dangerous forces***

In view of the extremely dangerous effects which attacks against “works and installations containing dangerous forces” might have on the lives of the civilian population and their property, the 1977 Protocols prohibit such attacks, even in cases where the said objects are military objectives.<sup>18</sup> Three types of works or installations are specified: dams,

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<sup>13</sup> Protocol I of 1977, Article 54, paragraph 2 (our italics).

<sup>14</sup> *Ibid.*, paragraph 5.

<sup>15</sup> *Commentary on the Additional Protocols of 1977 to the Geneva Conventions of 1949*, Y. Sandoz, Ch. Swinarski and B. Zimmermann (ed.), ICRC and Martinus Nijhoff Publishers, Geneva, 1987, para. 2101, p. 655.

<sup>16</sup> Protocol I, Article 54, para. 3.

<sup>17</sup> *Ibid.*, para. 4.

<sup>18</sup> Protocol I, Article 56 and Protocol II, Article 15. The latter article corresponds, however, only to the first sentence of Article 56 in Protocol I.

dykes and nuclear electrical generating stations. Past experience of armed conflicts has shown that these are considered priority targets, the destruction of which can decide the outcome of a battle or even a war. Aware of the dangers inherent in such destruction, which go far beyond the legitimate military objectives of attacks, the authors of Protocol I added further clauses to supplement this special protection as follows.

Even military objectives located at or in the vicinity of such installations may not be made the object of attack "if such attack may cause the release of dangerous forces ... and consequent severe losses among the civilian population".<sup>19</sup> The special protection against attack provided for the two types of installations (dams, dykes and nuclear electrical generating stations on the one hand, and military objectives located at or in the vicinity of such installations on the other) is waived only when any of these works is used "in regular, significant and direct support of military operations" and if such attack is "the only feasible way to terminate such support".<sup>20</sup> Paragraph 3 of the same article calls upon belligerents to take precautionary measures to ensure that *the civilian population and individual civilians* receive the protection accorded them by international law. Nothing is said of the precautions that must be taken for *civilian property*, but it may legitimately be concluded that this is covered by the second sentence of the paragraph. Reprisals against such installations and military objectives are prohibited,<sup>21</sup> while the general prohibition on locating any military objectives in the vicinity of such works is tempered by permission to erect purely defensive installations to protect the said works.<sup>22</sup> The conclusion of special agreements to provide extra protection or for identification, using the sign indicated in Protocol I (Annex I, Article 17), is left to the initiative of the parties.<sup>23</sup> From the point of view of repression, "launching an attack against works or installations containing dangerous forces in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects, as defined in Article 57, paragraph 2 (a) (iii)"<sup>24</sup> is regarded as a grave breach of the Conventions

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<sup>19</sup> Protocol I, Article 56, para. 1, second sentence.

<sup>20</sup> *Ibid.*, para. 2, sub-para. (a), (b) and (c).

<sup>21</sup> *Ibid.*, para. 4.

<sup>22</sup> *Ibid.*, para. 5.

<sup>23</sup> *Ibid.*, paras 6 and 7. Since the adoption in 1993 of amendments to Annex I of Protocol I, Article 16 of the Annex, referred to in Article 56, para. 7 of the Protocol, has become Article 17.

<sup>24</sup> Protocol I, Article 85, 3 (c).

and Protocol. It should be noted that this provision covers civilians and civilian objects, which confirms our earlier remark regarding the omission in paragraph 3 of Article 56.

Observance of these rules governing the conduct of hostilities is sufficient to ensure effective protection of water resources and installations, which are indispensable to the survival of the civilian population. Parties to conflict are also under further obligations with regard to the protection of victims. One of these is the provision of water.

### **(B) Water as an indispensable resource for the survival of protected persons**

Humanitarian law seeks to ensure at least minimum normal living conditions for the persons it is intended to protect. Humane treatment constitutes the basis of such "normality"; it finds practical expression in the satisfaction of basic human needs, and basic needs mean water. Generally speaking, assistance and care for the wounded and sick is inconceivable without water. To be able to do their work, medical staff need water. The same applies to medical equipment and installations as well as to the hygiene and maintenance of any place where there are protected persons. This is so obvious that it has not been considered necessary to formulate specific rules. In some contexts, however, an explicit reference has to be made, as in some provisions of the Third and Fourth Conventions.<sup>25</sup> Article 20, paragraph 2, of the Third Convention stipulates that prisoners of war who are being evacuated must be supplied by the Detaining Power with sufficient food and potable water, and with the necessary clothing and medical attention. The same obligation is laid down in Article 46, paragraph 3, of the said Convention, for the transfer of prisoners of war, and in Article 127, paragraph 2, of the Fourth Convention, for the transfer of internees. Drinking water is also referred to in a separate paragraph of the article common to the two Conventions and

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<sup>25</sup> The aforementioned provisions of the Protocols will not be further examined here. Suffice it to say that transport by water is also a major and in some cases indispensable means of conveyance and even rest facility for protected persons, as indicated in the rules governing hospital ships and other medical craft. Besides the important provisions in Articles 54 and 56 considered above, Protocol I mentions water in other articles which reflect a broad approach and which grant medical facilities and persons extensive protection "*whether at sea or in other waters*" (Protocol I, Articles 8 (b); 23, para. 1; and 44, para. 8). In a different context, water is referred to as a means prisoners of war can use for their escape (Third Convention, Article 91, para. 1 (3)).

concerning the daily food rations of prisoners of war and civilian internees.<sup>26</sup>

### **(C) Role of civil defence organizations**

It should be noted in particular that one of the humanitarian tasks of civil defence organizations, whose rights and duties are laid down in the new provisions of 1977 Protocol I, is the emergency repair of indispensable public utilities. Other explicitly mentioned tasks in aid of the civilian population include fire-fighting, provision of emergency supplies and the preservation of objects essential for survival. Even though civil defence personnel are active only within the national territory, whether it is occupied or not, these provisions strengthen the protection accorded to civilian objects and, if faithfully observed, can make a valuable contribution to the assistance provided to the civilian population. The role of civil defence organizations in protecting water storage and other supply systems must be stressed and respected.<sup>27</sup>

This brief reminder of the relevant rules is enough to show that the protection of water in times of armed conflict is an integral part of humanitarian law.<sup>28</sup> It also shows that this law, in its most recent codification, has taken account of the impact of modern warfare on water installations and reserves of drinking water, for indeed the damage caused to water as a result of hostilities could jeopardize the fauna and flora of a region, force entire populations to leave their homes and eliminate any sign of life. Humanitarian aid agencies have witnessed such effects in various situations and have important tasks to accomplish in this domain.

## **II. Role of the ICRC and the other components of the International Red Cross and Red Crescent Movement**

In its humanitarian work to assist the victims of armed conflict the ICRC, in accordance with its mandate under the Geneva Conventions,

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<sup>26</sup> Third and Fourth Conventions, Article 26, para. 3 and Article 89, para. 3, respectively.

<sup>27</sup> Protocol I of 1977, Article 61 (a) (vii), (x), (xii) and (xiv) in particular.

<sup>28</sup> Among its draft articles on the *law of non-navigational uses of international watercourses*, the United Nations International Law Commission adopted Article 29, entitled "International watercourses and installations in time of armed conflict", which stipulates that "international watercourses and related installations, facilities and other

gives priority to the immediate interests and benefit of protected persons. Any steps it takes to protect water or other civilian objects are essentially only a means of helping the victims. If water installations and civilian supply systems are spared by the belligerents, as required by humanitarian law, the ICRC must concentrate on other tasks, of which there are many in wartime. Conversely, if such installations and systems have been destroyed, then immediate action must be taken to repair them, since any delay or setback in doing so can have serious consequences for the population and its means of survival. Several recent or present conflicts have shown how acute problems caused by damage to water storage or supply systems can be. The magnitude of these problems is such that the ICRC may take both remedial (A) and preventive (B) action.

### **(A) Remedial action**

Two aspects merit particular attention here: water distribution (1) and the repair of supply systems (2).

#### **(1) *Water distribution***

To give only one example of this type of action, from the start of the 1990/91 Gulf War the ICRC supplied water, food and medicines to tens of thousands of foreign nationals who had fled Iraq and Kuwait. With the help of the Jordan National Red Crescent Society, the transit camps set up in Jordan were able to provide satisfactory conditions of hygiene.<sup>29</sup>

In Iraq itself, help was needed to restore drinking water supplies both for the population and for local public services. A special programme was set up to distribute purified water in one-litre plastic bags to meet the needs of hospitals and health centres. In some urban centres in the south and north of the country, tanker trucks were used to supply people in neighbourhoods deprived of drinking water.<sup>30</sup> This method of water distribution has the advantage in such circumstances of being quick and effective, but cannot replace the classic system of distribution through a network, which is more effective but often requires more lengthy repairs.

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works shall enjoy the protection accorded by the principles and rules of international law applicable to international and internal armed conflict and shall not be used in violation of those principles and rules." See ILC report on its 46th session (1994), A/49/10, p. 315.

<sup>29</sup> See ICRC *Reference Report 1990*, p. 82.

<sup>30</sup> ICRC, *1991 Annual Report*, p. 107.



**(2) *Repair of supply systems and purification of drinking water reserves***

In situations of armed conflict, power plants are often put out of action. This can totally disrupt water supply and sewerage systems. Apart from the ensuing privations, the risk of epidemics increases and repair work takes longer, costs more and may even be impossible. In such circumstances the ICRC must take urgent action to ensure a minimum degree of protection for objects indispensable to the survival of the civilian population and to preserve or guarantee minimum conditions of health and hygiene. For this, it calls in engineers and public health specialists whose main task is to repair damaged installations and draw up plans and programmes to deal with the emergency.<sup>31</sup>

The relief operation in Iraq in March 1991 can again serve as an example. The ICRC organized a programme to restore drinking water supplies throughout the country, based not only on water distribution, as mentioned earlier, but also on the restoration of water-treatment and distribution systems. For this purpose the Iraqi water services were provided with maintenance equipment, spare parts and chemicals to treat water. Thanks to this programme, cholera, typhus and other epidemics threatening the population were successfully averted.<sup>32</sup> In 1994, the ICRC completed a programme to provide spare parts enabling the Iraqi water services to maintain or rehabilitate about 100 medium-sized water-treatment units (up to 50,000 m<sup>3</sup>/hour) and several medium-sized waterworks (around 100,000 m<sup>3</sup>/hour).<sup>33</sup>

In Yemen, the big Bir Nassir pumping station, supplying Aden, was damaged after civil war broke out in Yemen in 1994. This would have had disastrous consequences for the population of Aden but for the water of the city's wells. With the help of the local authorities, teams of ICRC engineers improved the production of wells in public places and mosques to working order, installed generators and pumps, and repaired and replaced water pipes and storage tanks. After the conflict had ended, the ICRC set up a system to distribute water by tanker truck to the entire population, displaced people, detainees, people in hospital, but in particular Yemeni engineers, with logistical support from the ICRC, also repaired the pumping stations at Bir Nasser and Lahaj, and the Yemeni water

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<sup>31</sup> In 1991, some 40 sanitary engineers took part in the ICRC's sanitation programme in Iraq. *Ibid.*, p.107.

<sup>32</sup> *Ibid.*, pp. 103 and 107.

<sup>33</sup> See 1994 *Annual Report*, p. 234.

services were provided with logistic support, equipment and technical assistance by the ICRC.<sup>34</sup>

The effects of an armed conflict can extend beyond the cessation of active hostilities, as shown above, and the ICRC may have to continue its activities to facilitate access to drinking water. The needs and problems encountered are often so great that the ICRC supplements its own teams by calling in other qualified personnel, who may be seconded from National Red Cross and Red Crescent Societies. Furthermore, the role of the components of the International Red Cross and Red Crescent Movement in protecting water supply systems<sup>35</sup> must not be confined to remedial action alone.

## **(B) Preventive action**

Although preventive aspects were taken into account in the two examples mentioned above, as they are in other similar situations, particular emphasis should be placed on two points.

### ***(1) Approaches to parties to conflict***

In working for the “faithful application”<sup>36</sup> of international humanitarian law, the ICRC must engage wherever necessary in active diplomacy to urge respect for that law. Its approaches, though confidential in principle, may be made public under certain conditions;<sup>37</sup> this applies to violations affecting either protected persons or protected objects. Any deliberate attack on water installations or reserves of drinking water for civilian use must accordingly be followed by appropriate representations to ensure that such violations are stopped, that any recurrence is prevented

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<sup>34</sup> *Ibid.*, p. 242.

<sup>35</sup> In 1994, for instance, one of the ICRC's priorities in Bosnia-Herzegovina was to overcome water shortages and problems of access to drinking water. The National Societies helped the ICRC and continued to work alongside it, *inter alia* on water and sanitation programmes. See *1994 Annual Report*, pp. 153-154.

<sup>36</sup> Statutes of the Movement, Article 5, para. 2 (c) and ICRC Statutes, Article 4, para. 1 (c). For the texts of the Statutes, see *Handbook of the International Red Cross and Red Crescent Movement*, ICRC and International Federation of Red Cross and Red Crescent Societies, Geneva, 13th edition, to be published shortly.

<sup>37</sup> See “Action by the International Committee of the Red Cross in the event of breaches of international humanitarian law”, *IRRC*, No. 221, March-April 1981, pp. 76-83.

and that all necessary action is taken against the offenders. Public appeals issued by the ICRC must where necessary draw attention to the applicable legal principles.

**(2) *Action to mobilize and create awareness***

The action taken in times of armed conflict, as described above, does not exclude peacetime initiatives to explain the existing law and to alert public opinion and decision-makers to the effects of armed conflict on water resources and hence on the living conditions of the population. The experience gained in a variety of conflicts should, without giving rise to unnecessary alarm, help to guide humanitarian action and to resolve problems more effectively. This was in fact one of the conclusions reached by a symposium organized by the ICRC in Montreux in 1994<sup>38</sup> and attended by about fifty experts (including specialists from certain UN bodies and non-governmental organizations, lawyers, sanitary engineers, scientists belonging to National Societies and the Federation and specialized journalists). At the close of the symposium, the participants agreed to work towards a number of objectives, namely:

- to provide better protection (material and legal) for water supply systems and for sanitary engineers;
- to strengthen cooperation in this area between the ICRC, the National Red Cross and Red Crescent Societies and their Federation, United Nations agencies, NGOs and the private sector;
- to improve coordination and cooperation in the exchange of appropriate information, knowledge and expertise;
- to involve the private sector in helping to repair water supply systems affected by hostilities;
- to take the necessary preventive measures in peacetime to avoid or limit the devastating effects of water shortages in wartime, and to broaden the scope of medical operations in wartime to include public health activities in emergency relief;

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<sup>38</sup> International Symposium on Water in Armed Conflicts, Montreux, 21-23 November 1994. A report on this symposium is being prepared. See also Christian Chesnot, "L'arme de la soif" in *Hydroplus — International Water Review*, January-February 1995, No. 50, pp. 16-20; Wilfried Remans, "Water and War", in *Humanitäres Völkerrecht*, No. 1, 1995, pp. 4-14.

- to make known as widely as possible the international rules protecting water supplies and installations by informing and educating all levels of society.

These objectives cannot be attained by a single organization and require concerted action, especially by all the Movement's components. While emergency action in times of armed conflict and natural disasters must be given priority, the Movement should also address other potentially dangerous situations. Whether in man-made or natural disasters, local populations and humanitarian organizations may well face the same type of problems. In both cases, attention must be given first and foremost to needs for water and to the requirements of public health facilities. Hence the need to go beyond emergency action alone by organizing suitable programmes and recruiting and training qualified personnel, since without drinking water those facilities will be paralysed, and without them even the most sophisticated arrangements to provide medical care will be doomed to failure. It may be added that, in dealing with the sort of difficulties referred to above, activities which are planned or implemented by components of the Movement, either separately or jointly, are in no way exclusive, and cooperation should extend equally to outside specialized agencies with a view to preparing joint action where appropriate. In such cooperation there should be at least a minimum of coherence and coordination.<sup>39</sup>

### III. Final remarks

1. In armed conflict, water sometimes becomes a target or is even used as a means of warfare. In either case, so long as water is a civilian object and indispensable to the survival of the population, warfare

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<sup>39</sup> In its Final Declaration, the International Conference for the Protection of War Victims, held in Geneva from 30 August to 1 September 1993, urged States *inter alia* to "improve the coordination of emergency humanitarian actions in order to give them the necessary coherence and efficiency, provide the necessary support to the humanitarian organizations entrusted with granting protection and assistance to the victims of armed conflicts and supplying, in all impartiality, victims of armed conflicts with goods or services essential to their survival..." (Final Declaration, section II, para. 8). See the text of the 1993 Declaration in the *Handbook of the International Red Cross and Red Crescent Movement*, International Committee of the Red Cross and International Federation of Red Cross and Red Crescent Societies, Geneva, 13th edition, to be published shortly.

*against or by means of* water is utterly incompatible with the principles and rules of humanitarian law specified above. The importance of the provisions concerned and the obligation to implement them effectively cannot be overemphasized.

2. Threats to water are the same as threats to the environment. The ICRC's mandate with regard to protection of the environment in times of armed conflict is recognized by the entire international community. This recognition should also benefit water, a vital resource in all circumstances, and emphasis should be placed on the need to protect water as such against the polluting and destructive effects of armed conflict.
3. Most of the relevant provisions of humanitarian law relate to situations of international armed conflict. Those applying to internal conflict are even less developed, while other situations of internal armed violence lie outside the field of application of international humanitarian law. Yet water-related tensions and attacks on water resources and installations are sometimes more frequent in situations of internal conflict and disturbances.
4. In the various situations of armed violence (conflict, tensions and disturbances), the ICRC has a mandate to fulfil (under the Geneva Conventions or its own Statutes, depending on circumstances), which enables it to be present, to act without delay and to take preventive action. It is on this basis that it conducts or takes part in sanitation programmes. The nature of present-day conflicts is inducing the ICRC to show greater initiative and, within the limits of its resources, to find appropriate solutions. To this effect it must help populations affected by armed violence and the services concerned to repair damaged water installations and, where necessary, must supply technical know-how, since the survival of such populations and the operation of their production systems depend on water.
5. Whatever the objectives and priorities of action to protect water may be, any initiatives taken by the main parties concerned should be based on consultation, coordination and the exchange of information. These elements are in our opinion essential, whether for action plans in response to emergencies or for preventive measures. If emphasis has been placed here on the role of the ICRC and the Movement's other components, it is to highlight their respective tasks and the principles underlying their action. Other complemen-

tary efforts are, however, unquestionably needed to address the effects of armed conflict on water resources and their varied and complex implications.

**Ameur Zemmali**, born in 1955, graduated from the Faculty of Law in Tunis and subsequently qualified there as a barrister. He also has a diploma of advanced law studies and a doctorate in law from the University of Geneva. A member of the Legal Division of the International Committee of the Red Cross, he has published several articles and research papers and has taken part in numerous studies of international humanitarian law; his article entitled "Imam Al-Awzai and his humanitarian ideas" appeared in the *Review* (No. 275, March-April 1990, pp. 115).

## **TOP ICRC OFFICIALS RE-ELECTED**

The International Committee of the Red Cross, meeting in Assembly in Geneva on 28 September 1995, re-elected Mr Cornelio Sommaruga as its President for a third term, to begin when the present one expires at the end of 1995.

At the same time Mr Pierre Keller was confirmed in the post of Vice-President, while two of the ICRC's Directors, Mr Jean de Courten and Mr Yves Sandoz, were re-elected to the Institution's seven-member Executive Board.

The Board will thus continue to be constituted as follows:

Mr Cornelio Sommaruga, President

Mr Eric Roethlisberger, Permanent Vice-President

Mrs Anne Petitpierre, member of the ICRC

Mr Jacques Forster, member of the ICRC

Mr Peter Fuchs, Director General

Mr Jean de Courten, Director of Operations

Mr Yves Sandoz, Director for Principles, Law and Relations with the Movement

# Thirty-fifth award of the Florence Nightingale Medal

GENEVA, 12 May 1995

CIRCULAR N° 580

*To the Central Committees of the  
National Red Cross and Red Crescent Societies*

LADIES AND GENTLEMEN,

In Circular N° 578 dated September 1994, the International Committee of the Red Cross invited the Central Committees of National Societies to submit all relevant information on qualified nurses and voluntary aides who are active members or regular helpers of a National Society or of an affiliated medical or nursing institution and who are considered suitable candidates to receive the Florence Nightingale Medal.

The object of this medal is to honour male and female nurses and voluntary aides who have distinguished themselves, whether in time of peace or in war, by their exceptional devotion to the wounded, the sick, the disabled or persons whose health is at risk.

The International Committee, after careful study of the candidatures submitted by the National Societies, is pleased to announce that the nurses and voluntary aides listed below have been selected for the thirty-fifth award of the Florence Nightingale Medal.

AUSTRALIA

1. *Ms Mary James*, graduate nurse and midwife. Missions abroad for the International Federation and the Australian Red Cross Society.



## THIRTY-FIFTH AWARD OF THE FLORENCE NIGHTINGALE MEDAL

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### CANADA

2. *Miss Vera Roberts*, graduate nurse. Senior public health positions in the service of isolated population groups.

### CHINA (People's Republic of)

3. *Mrs Zou Ruifang*, graduate nurse. Director of the Nursing Department of Huzhou First People's Hospital.
4. *Mrs Sun Jingxia*, graduate nurse. Technical nursing adviser of Changzhou Hospital, President of Changzhou Branch of the Nursing Association of Jiangsu Province.

### DENMARK

5. *Ms Lone Jacobsen*, graduate nurse. Head nurse at the Rehabilitation and Research Center for Torture Survivors, Copenhagen.

### FRANCE

6. *Mrs Hélène Delpon de Vaux*, graduate nurse. Active during the Indochina War. Volunteer nurse with the French Red Cross. In charge of volunteers going on international missions and reserve staff for the Army Medical Service and the Ministry of Health.
7. *Miss Magdeleine Marie-Louise Gosset*, graduate nurse with the French Red Cross. Active during the Second World War.

### GERMANY

8. *Sister Edith Gehlert*, nurse with the German Red Cross. Active during the Second World War. Head nurse of the home for retired members of the Bavarian Red Cross Nurses' Association in Munich.

### GREAT BRITAIN

9. *Mrs Jennifer Ann Hayward-Karlsson*, graduate nurse. Member of the British Red Cross. Missions abroad for the ICRC and the International Federation.

### GRENADA

10. *Mrs Hilda Elizabeth Mascoll*, volunteer social worker. Member of the Central Committee of the Red Cross Society of Grenada. Principal superintendent, St John Ambulance Brigade.

ITALY

11. *Sister Maria Cristina Luinetti*, volunteer nurse with the Italian Red Cross. Died while on active service in Mogadishu in 1993.
12. *Sister Adriana Bertini*, volunteer nurse with the Italian Red Cross. Active during the Second World War.

JAPAN

13. *Miss Uta Iwata*, graduate nurse. Member of the Council of the Japanese Red Cross Academy, Honorary Member of the Teishin Medical Society.
14. *Miss Kimi Tsuzuki*, graduate nurse and midwife. Member of the Board of the Council of the Japanese Red Cross Academy. Vice-President of the Central Nursing School of Social Health Insurance. Member of the Board of the Foundation of Public Health Promotion.
15. *Miss Kiyo Hisamura*, graduate nurse. Chairwoman of the Red Cross Volunteer Service Corps, Japanese Red Cross Nagasaki Prefectural Chapter.

JORDAN

16. *Mr Mansour Mohammed Abu-Hanieh*, member of the Red Crescent Rescue Team. Field officer with the Jordan National Red Crescent Society and UNHCR.

KOREA (Republic of)

17. *Mrs Hyun-Kwon Park*, graduate nurse. Superintendent of the Nursing Department of the Leprosy Mission, Jesus Hospital, Taegu.

MADAGASCAR

18. *Mrs Marcelline Razanamparany*, graduate social worker. Chairwoman of the Provincial Red Cross of Majunga. Member of the Board of the Malagasy Red Cross Society.

MEXICO

19. *Mrs Maria del Pilar Servitje Montull de Mariscal*, volunteer nurse with the Mexican Red Cross. Chairwoman of the National Committee of Nursing Schools of the Mexican Red Cross.

NEW ZEALAND

20. *Ms Judith Christine Owen*, graduate nurse. Numerous missions abroad for the ICRC.

PHILIPPINES (The)

21. *Mrs Lydia M. Venzon*, graduate nurse, adviser. Professor in several universities and colleges of nursing.

POLAND

22. *Mrs Anna Kowalska*, graduate nurse. Director of and teacher at the State Nursing School in Warsaw.
23. *Miss Rachela Huther*, graduate nurse. Active during the Second World War. Development of education programmes. Lecturer at and responsible for managing the Nursing Faculty of the Medical Academy. Expert in nursing at the European office of WHO.
24. *Mrs Ewa Bednarczyk*, graduate nurse. Active during the Second World War and her exile in Siberia and Kazakhstan. Member of the Polish Red Cross.
25. *Mrs Irena Czyzycka*, graduate nurse. Member of the Polish Red Cross. Head of the Governing Board for day nurseries.

SWITZERLAND

26. *Miss Emilie Grosjean*, secretary at the Swiss Red Cross, Yverdon-Les-Bains branch. Active during the Second World War in transferring to Switzerland children from Austria, Hungary, France and Italy.

THAILAND

27. *Miss Anan Tongchareon*, graduate nurse. Deputy chief of the Sawanganivas Rehabilitation Center, Thai Red Cross Society.
28. *Miss Somboon Pruksaraj*, graduate nurse. Head nurse, Chulalongkorn Hospital, Thai Red Cross Society.

UKRAINE

29. *Dr Maria Vassilivna Rozhoniuk*, voluntary nursing aide during the Second World War. Graduate from the Medical School of Crimea. President of the Regional Committee, Section of Crimea, Ukrainian Red Cross.
30. *Mrs Antonina Yakivna Soloviova*, graduate nurse. Active during the Second World War. Head of the Commission of Women-Veterans of Kiev.

The thirty-fifth award made on 12 May 1995 brings the total number of medals awarded to 1,105.

The medals and diplomas, accompanied in each case by a photogravure of the portrait of Florence Nightingale, will be dispatched to the Central Committees as soon as possible. The International Committee of the Red Cross would like to receive acknowledgement of their receipt in due course.

The Committee would be grateful if the Medals could be presented in the course of this year and requests the Central Committees to invest the presentation ceremony with a character of formality in keeping with the founders' wishes.

The International Committee of the Red Cross requests the Central Committees to convey on this occasion its warmest congratulations to the nurses and voluntary aides who are to be awarded the Florence Nightingale Medal.

With high consideration.

FOR THE INTERNATIONAL COMMITTEE  
OF THE RED CROSS  
**Cornelio Sommaruga**  
*President*

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**UNITED NATIONS GENERAL ASSEMBLY  
50th SESSION**

**SPECIAL COMMEMORATIVE MEETING  
OF THE GENERAL ASSEMBLY  
ON THE OCCASION OF  
THE FIFTIETH ANNIVERSARY  
OF THE UNITED NATIONS**

**Statement by Mr Cornelio Sommaruga  
President of the International Committee of the Red Cross**

*(New York, 22 October 1995)*

*The fiftieth anniversary of the United Nations was celebrated at a special commemorative meeting of the General Assembly, held in New York from 21 to 25 October 1995.*

*Following addresses by the President of the Assembly and the United Nations Secretary-General, some 160 heads of State and government leaders, as well as the heads of international and regional organizations, took the floor to highlight the problems faced by the UN and discuss ways to remedy its shortcomings. They reaffirmed that the organization is still essential to the international community but that reforms are needed, and stressed that more funds must be made available to it.*

*The first day of the meeting ended with a statement by the President of the ICRC, Mr Cornelio Sommaruga, the text of which the **Review** has reproduced below:*

“The celebration of the 50th anniversary of the United Nations is an event full of symbolism which invites us all to reflect upon world events, past and future. The International Committee of the Red Cross is therefore

especially pleased to take part in this celebration, which provides it with the opportunity to reaffirm its faith in humanity by paying tribute to an institution that was created in the image of mankind: imperfect, unique and irreplaceable.

Although the respective nature and goals of the United Nations and of the ICRC are completely different, the two institutions nevertheless spring from the same humanist philosophy. For the founders of the United Nations in 1945, as for the ICRC in 1864 and again in 1949, the aim was to cast out the demons of war in the aftermath of a devastating and deadly conflict by striving to define and express in tangible form universal values capable of bringing all peoples together.

The Charter of the United Nations and the 1949 Geneva Conventions for the protection of war victims, which were adopted almost simultaneously and by the same States as a reaction to the Second World War, have today unquestionably become part of humanity's common heritage. The men and women who drafted the two instruments demonstrated not only their noble ideals and generosity but also a high degree of lucidity, for they were quite aware that war could not be banned altogether. The two initiatives were thus intentionally quite separate and have remained so.

Over the past 50 years, while membership of the international community has grown considerably, the validity of these universal instruments has never been contested. It is remarkable to note that new States have endorsed the spirit of Geneva just as readily as that of San Francisco, and have indeed strengthened it by approving further treaties.

Thus the Additional Protocols of 1977 came into being to expand upon and supplement the Geneva Conventions and to deal in particular with conflicts generated by the decolonization process and with the proliferation of internal armed conflicts.

The very term "international community" would have remained a merely abstract concept had the United Nations not given it substance by bringing its members together right here in the General Assembly, and this is not the least of the organization's merits.

While basic human values are now the subject of universal consensus, ensuring respect for them remains a daily challenge. Fortunately, we have so far been spared a Third World War, yet more than 120 conflicts have claimed 22 million lives throughout the world since 1945, and continue to cause untold suffering. The lip-service paid to human dignity today is matched only by the contempt in which it is held. Faced with this paradox,

the International Committee of the Red Cross, whose humanitarian activities have taken on vast proportions, wishes to speak out here on behalf of the countless victims claimed by armed conflicts, whether spotlighted by the media or forgotten by the outside world.

Do we not all bear some burden of responsibility for this situation? Is it not true that States have a political responsibility in these matters, and that institutions and individuals also have a part to play?

If lives are to be saved in situations of extreme emergency, humanitarian action must be taken rapidly and independently of any considerations other than its immediate aim, which is to bring assistance and protection. While this type of response is indispensable, it has its limitations. The only effective way to prevent such emergencies is to strike at the root cause of the evil. The United Nations has steadfastly endeavoured to do just that, by creating the conditions necessary for the exercise of basic human rights, whether economic, political, social or cultural, and whether in the fields of environmental protection, development or disarmament, to mention only the most important. However, political action still remains a key factor in preventing crises and here States bear the primary responsibility. It is likewise up to States, acting either individually or jointly through the United Nations, to ensure respect for the rules of international humanitarian law, in particular those of the Geneva Conventions. It is also essential for the United Nations to move towards the establishment of a permanent international criminal tribunal.

But a spirit of tolerance and solidarity, respect for minorities and indeed respect for one's fellow human beings in general also depend largely on the attitude of individuals. The growing efforts made by civil society to spur government action and to take part in major international debates can therefore be seen as a beacon of hope. The International Red Cross and Red Crescent Movement, ever faithful to its Fundamental Principles, is thoroughly committed to this process.

Extraordinary developments in the field of communications and increasing interdependency have turned our planet into a close-knit universe, prompting greater cooperation but at the same time heightening tension. Indeed, the proliferation of crises and their deadly and destabilizing effects have confronted us with an unprecedented challenge.

In the name of the universal values embodied by the United Nations, whose anniversary we are celebrating today, and mindful of its Charter, which begins with the words "We the peoples..." and thereby places us squarely before our responsibilities, we must, as a matter of urgency,

reject the inevitability of a backward slide. Therefore, let us all form a united front to defeat intolerance and demand respect, at every opportunity, for human dignity.”

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## **ACCESSION TO PROTOCOL II BY THE REPUBLIC OF COLOMBIA**

The Republic of Colombia acceded on 14 August 1995 to Protocol II additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, adopted in Geneva on 8 June 1977.

Pursuant to its provisions, the Protocol will come into force for the Republic of Colombia on 14 February 1996.

This accession brings to **129** the number of States party to Protocol II.

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## **THE REPUBLIC OF PANAMA RATIFIES THE PROTOCOLS**

The Republic of Panama ratified on 18 September 1995 the Protocols additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) and Non-International Armed Conflicts (Protocol II), adopted in Geneva on 8 June 1977.

Pursuant to their provisions, the Protocols will come into force for the Republic of Panama on 18 March 1996.

This ratification brings to **139** the number of States party to Protocol I and to **130** those party to Protocol II.

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**ACCESSION OF THE FEDERATED STATES  
OF MICRONESIA  
TO THE GENEVA CONVENTIONS  
AND THEIR ADDITIONAL PROTOCOLS**

On 19 September 1995, the Federated States of Micronesia acceded to the four Geneva Conventions of 12 August 1949 and to their Additional Protocols of 8 June 1977.

These instruments will come into force for the Federated States of Micronesia on 19 March 1996.

The Federated States of Micronesia is the **186th** State party to the Geneva Conventions. It is the **140th** State party to Protocol I and the **131st** State party to Protocol II.

### **CHILD SOLDIERS**

#### *The Role of Children in Armed Conflicts<sup>1</sup>*

The participation of children in hostilities has become an increasingly common phenomenon which appears to be connected to the emergence of new kinds of conflicts, fought between regular armed forces and guerrilla forces. Despite the international community's growing concern for child soldiers, few studies take into account all the factors involved or make practical suggestions to remedy the problem.

By examining various typical conflicts this book analyses the issue in depth, closely studying each of the factors which give rise to this phenomenon. The authors begin by giving a definition of what a child is. Taking as a basis the age for military service and the voting age in more than 185 States, they conclude that the age of eighteen marks the transition between childhood and adulthood. A search for the reasons why children participate in hostilities reveals that their recruitment by armed groups is influenced by many widely divergent factors: the economic, social and political causes of the conflict, peer group pressure, fear, threats, the wish to feel safe or to take revenge. The authors then suggest a series of concrete measures to halt the enrolment of children.

In considering means of preventing the recruitment of children into the armed forces the authors review all the provisions of international human rights and international humanitarian law intended to protect children in periods of armed conflict. They observe that irrespective of the relevant legal instrument (the 1989 United Nations Convention on the Rights of the Child, the 1949 Geneva Conventions and their Additional Protocols of 1977), the protection for young people is only indirect, depending on States and their national legislation. Even though the participation in hostilities of children below the age of fifteen is prohibited (Protocol I, Art. 77, para. 2 and Protocol II, Art. 4, para. 3(c)), effective application of these provisions is subject to numerous conditions, e.g. ratification of these treaties by States, or the consent or ability of non-State entities to implement them.

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<sup>1</sup> Guy Goodwin-Gill and Ilene Cohn, *Child Soldiers, The Role of Children in Armed Conflicts*, A Study on Behalf of the Henry Dunant Institute, Clarendon Press, Oxford, 1994, 228 pp.

The authors also have the merit of looking into a subject which is rarely addressed, i.e. the mental and physical disorders caused in children by their participation in hostilities or a period spent in detention. A better knowledge of war trauma in children enables local non-governmental organizations — which are mainly responsible for rehabilitating children — to set up programmes to facilitate their reintegration into the civilian community.

Emphasis is placed by the authors on the fundamental role of the ICRC (present in most conflicts where children are involved) in protecting child soldiers on the spot, notably in visiting child detainees. They also underscore the complementary role which must be played by local non-governmental organizations and humanitarian agencies.

Noting that “a significant part of international human rights law is based on the protection of children and young persons up to the age of eighteen”, the authors believe that a total ban on the participation of these children in hostilities is a fundamental objective to be attained within the coming years. It requires a mobilization of the entire international community (non-governmental organizations, the United Nations and other international organizations, as well as States).

The best way of raising the age of participation in hostilities would be to adopt a declaration containing minimum humanitarian standards banning any participation whatsoever under eighteen years of age and clearly specifying the responsibilities of adults in charge of recruiting children. At the same time, the enrolment of children in armed factions could be discussed by the various bodies which monitor the implementation of human rights and international humanitarian law.

The interest of this study lies not only in the comprehensive analysis of the causes of participation by children in hostilities and the consequences their participation has, but also in the very specific proposals it puts forward to curb such practices.

An enormous amount of research went into compiling the remarkable annex to the book. It provides an exhaustive list of 189 countries indicating whether or not they are party to the UN Convention on the Rights of the Child, the Geneva Conventions and their Additional Protocols and the main regional and international human rights treaties, as well as specifying the respective voting and military age in each State. This latest research into internal State practice serves as a basis for encouraging international acceptance of a higher minimum age for participation by children in hostilities.

This book by Guy Goodwin-Gill and Ilene Cohn, supported by an extensive bibliography, is unquestionably a first-class reference work for analysis of the phenomenon of child soldiers. May it be, as the authors desire, a further step towards preventing children from taking up arms.

*Lydie Ventre*

## FOCUS ON HUMANITY A CENTURY OF PHOTOGRAPHY

### *The ICRC Archives*

The Skira publishing house has just brought out an intensely moving book on the role of photography in humanitarian action.\* Nicolas Bouvier selected the pictures for this magnificent volume with great sensitivity to their moral impact, Michèle Mercier wrote the engrossing narrative and François Bugnion contributed an admirable preface. With the help of Isabelle Engammare, the authors delved deep into the "storehouses of sorrow", as Nicolas Bouvier calls their main source, the photo archives of the International Committee of the Red Cross.

This book in all its harsh beauty shows as none has ever done before how photography, in its privileged and sometimes ambiguous relationship with war, can capture the "human gesture of compassion". "Beauty" is used here in the special sense given to it by the philosopher Simone Weil in the epigraph to François Bugnion's preface, which traces the parallel between the history of photography and that of humanitarian action: "A just and loving spirit sheds the radiance of beauty upon misfortune, and this alone allows us to see and reproduce it as it is."

Humanitarian law is built on suffering, and while it is true that the Geneva Conventions cannot be "photographed", suffering can. Yet if this book successfully avoids the "aesthetics of drama", in accordance with Nicolas Bouvier's wishes, it is because the authors chose photographs in which life itself seems to be called into question, and the question is directed at us. Indeed, these faces (Cyprus, 1974) appeal to us, the readers; it is towards us that these arms (Zambia, 1978) reach out. And when we look at the harrowing photograph of Armenian

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\* Nicolas Bouvier, Michèle Mercier and François Bugnion, *Focus on humanity. A century of photography. Archives of the International Committee of the Red Cross*, Skira, Geneva, 1995.

prisoners in Azerbaijan (Baku, 1993) we are uncomfortably aware that history can hunt us down and trap us too.

Thanks to the intrinsic power of these photographs and the sure hand with which they were chosen, the ultimate aim of the Geneva Conventions, summarized, explained and put into historical perspective by Michèle Mercier, becomes self-evident and will certainly be a revelation to the lay reader. Moreover, the texts which accompany the pictures — extracts from family messages, from prisoners' letters and from reports and notes written by ICRC delegates — illustrate better than any treatise the real psychological and physical impact of international humanitarian law. *Focus on humanity* embodies moral principles which concern each and everyone of us. It brings home to us the fragility of our flesh and of our dignity as individuals in the face of man's destructive violence. But it is also a tribute to all the men and women whose unflagging work in the field is carried out with the energy of those who never feel resignation or give in to despair.

*Didier Helg*

<p><b>Didier Helg</b> is Director of the International Red Cross and Red Crescent Museum.</p>
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The *International Review of the Red Cross* is the official publication of the International Committee of the Red Cross. It was first published in 1869 under the title "Bulletin international des Sociétés de secours aux militaires blessés", and then "Bulletin international des Sociétés de la Croix-Rouge".

The *International Review of the Red Cross* is a forum for reflection and comment and serves as a reference work on the mission and guiding principles of the International Red Cross and Red Crescent Movement. It is also a specialized journal in the field of international humanitarian law and other aspects of humanitarian endeavour.

As a chronicle of the international activities of the Movement and a record of events, the *International Review of the Red Cross* is a constant source of information and maintains a link between the components of the International Red Cross and Red Crescent Movement.

The *International Review of the Red Cross* is published every two months, in five main editions:

French: REVUE INTERNATIONALE DE LA CROIX-ROUGE (since October 1869)

English: INTERNATIONAL REVIEW OF THE RED CROSS (since April 1961)

Spanish: REVISTA INTERNACIONAL DE LA CRUZ ROJA (since January 1976)

Arabic: المجلة الدولية للصليب الأحمر (since May-June 1988)

Russian: МЕЖДУНАРОДНЫЙ ЖУРНАЛ КРАСНОГО КРЕСТА (since November-December 1994)

Selected articles from the main editions have also been published in German under the title *Auszüge* since January 1950.

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The *International Committee of the Red Cross (ICRC)* and the *International Federation of Red Cross and Red Crescent Societies*, together with the *National Red Cross and Red Crescent Societies*, form the International Red Cross and Red Crescent Movement.

The *ICRC*, which gave rise to the Movement, is an independent humanitarian institution. As a neutral intermediary in the event of armed conflict or unrest it endeavours, on its own initiative or on the basis of the Geneva Conventions, to bring protection and assistance to the victims of international and non-international armed conflict and internal disturbances and tension.

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**INTERNATIONAL  
REVIEW**

**INTERNATIONAL CONFERENCES  
AND THE MOVEMENT**

**Red Cross law**

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*Water and armed conflicts*

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**Fiftieth anniversary  
of the United Nations**



**ICRC**  
PUBLICATIONS  
INTERNATIONAL COMMITTEE  
OF THE RED CROSS - GENEVA